

## Chapter 9 Safeguarding Multiparty Democracy through Constitutional Entrenchment: The Liberian Experience

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### 1. Introduction

Liberia has a long history of party politics that dates as far back as 1847, the year in which it was founded as a republic. Although the first political parties in Africa emerged in Liberia, it did not take long for the country to become dominated by a single party, the True Whig Party (TWP). By 1980, however, the TWP's rule had come to end, with the prospect of a more participatory democracy beginning to emerge, given that the 1847 Constitution was abrogated by putschists and a commission established to lead the drafting of a new constitution. Yet this constitution-making process (1981–1986) proved to be a missed opportunity to entrench multiparty democracy and limit presidential power. Indeed, the military junta led by Samuel Kanyon Doe undermined the work of the commission, and essential positions suggested by citizens were removed. The first multiparty elections, held in 1985, also fell prey to the machinations of the junta, with the results disputed by many. A few years later, in 1989, the country descended into a horrific civil war that would last 14 years. Liberia's hard-won multiparty democracy was being lost.

In 2005, however, the opportunity arose for the country to revive the democratic experience, and the first post-war elections were held. Although all has not been perfect since then, it is safe to say that Liberia is on the road to democratic consolidation. Here, political parties have played a notable role in this journey. The legal framework has also been a crucial guide to actors in the political space, as has been the overall environment, one which has embraced respect for peace, the rule of law, and political freedom.

Sustaining democracy depends to a large extent on constraints on incumbent power, the vitality of political opposition, and the resilience of civil society. This chapter examines the Liberian experience in order to highlight which legal and political arrangements have worked well and which are in need of attention. Accordingly, section 2 traces the origins of

democracy in Liberia with a view to understanding the one-party system that dominated the political system for more than a century. Section 3 in turn explores the making of the 1986 Constitution and the efforts that were taken to entrench political parties, while section 4 discusses how party constitutionalism works in practice, with the focus placed on political parties, electoral processes, and the overall political environment. Section 5 concludes the chapter with a distillation of its key findings.

## 2. The emergence and dominance of a single party

### 2.1 Political foundations

With the founding of the Liberian Republic in 1847, the country embraced democracy. The system of government, however, fell far short of an ideal democratic state: inequality, discrimination, and marginalisation were its chief characteristics for well over a century. Liberia's founding settlers hailed from the United States of America (US), yet ironically engineered a system of discrimination similar to what they themselves had been victim to in their former country.<sup>1</sup>

The preamble to the 1847 Constitution declared, "We the people of the Republic of Liberia were originally the inhabitants of the United States of North America",<sup>2</sup> symbolically effacing the country's indigenous inhabitants, who by all accounts were rendered invisible and excluded from participation in governance. For instance, citizenship was granted only to those of settler stock,<sup>3</sup> while exclusionary policies kept the indigenes out of commerce and education.<sup>4</sup> Citizens were, in fact, prohibited by the Constitution from purchasing land directly from indigenes.<sup>5</sup> Nevertheless,

1 BG Dennis and AK Dennis, *Slaves to Racism: An Unbroken Chain from America To Liberia*, New York, Algora Publishing (2008), pp 36–42.

2 Liberian Constitution, 1847.

3 EO Ojo and GA Agbude, "An Exploration of the Historical and the Political Backgrounds of Liberia", 1 (2012) *AFRREV IJAH: An International Journal of Arts and Humanities*, pp 187–200, at p 190.

4 EC Dillon, *The Role of Education in the Rise and Fall of Americo-Liberians in Liberia, West Africa (1980)*, Georgia State University PhD thesis" (2011), p 16, [https://scholarworks.gsu.edu/cgi/viewcontent.cgi?params=/context/eps\\_diss/article/1017/&path\\_info=The\\_Role\\_of\\_Education\\_in\\_the\\_Rise\\_and\\_Fall\\_of\\_Americo-Liberians\\_\\_inforemoved.pdf](https://scholarworks.gsu.edu/cgi/viewcontent.cgi?params=/context/eps_diss/article/1017/&path_info=The_Role_of_Education_in_the_Rise_and_Fall_of_Americo-Liberians__inforemoved.pdf) (accessed 24 March 2025).

5 CJ Stevens, "The Legal History of Public Land in Liberia", 58 (2014) *Journal of African Law*, pp 250–265, at p 251.

Americo-Liberians (that is, the descendants of freed slaves from the US and Caribbean, as well as of slaves rescued before crossing the Atlantic) were but a tiny fraction of the Liberian population and never exceeded 5 per cent of it.<sup>6</sup> As the years passed, the chasm between Americo-Liberians and the indigene population widened, with the prospect of a democracy reflective of the polity growing equally distant.

With democracy came elections, and with elections, partisan politics. At the outset, two groups fielded candidates in the elections, but lacked much in the way of formal organisation. In the country's first elections, held in 1847, Joseph Jenkins Roberts of the Pro-Administration group defeated Samuel Benedict of the Anti-Administration group.<sup>7</sup> In 1850, the Administration group was formally organised as the True Liberian Party, later changing its name to the Republican Party in 1867.<sup>8</sup> The Anti-Administration group in turn became known as the Opposition Party.<sup>9</sup>

However, the notion of organising into political parties was met with scepticism in many circles for its potential to disrupt 'cohesion' in the infant state. Those who instituted and benefited from a divisive system that placed indigenes at the margins of society were afraid of a possible divide based on party politics. Others argued that while party politics had its place, the time was not right. As the *Herald*, Liberia's first newspaper, remarked in its editorial on party politics,

[W]e anticipate, that the party domination will prevail except the one great party – The Country. We do not intend by this to say that parties when properly, and wisely, organized are not beneficial; we believe that they are; for they mutually probe corruption, vice, and cliques out of each other's ranks, [promote] the general interest, and maintain a political equilibrium among the classes of our great republican family; but we think, there is no necessity for a regular formal organization on those principles now we are confident that any other party ... in whatever

6 Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples – Liberia* (2007), <https://www.refworld.org/docid/4954ce5823.html> (accessed 24 February 2025).

7 It is unclear if these parties drew their names and inspiration from the Pro-Administration and Anti-Administration parties in the US in the eighteenth century. See CP Burrowes, *Power and Press Freedom in Liberia, 1830–1970: The Impact of Globalization and Civil Society on Media-Government Relations*, Trenton, Africa World Press (2004), p 85.

8 Ibid.

9 Ibid.

aspect, or disguise it may present itself, would be injurious, and fatal to the best interest of the country; though the time may not be very far distant, when parties, not a party, will exist, growing out of a diffused, general principle of intelligence and education.<sup>10</sup>

At the time, anti-partyism was a phenomenon with deep roots in Europe, where political parties were considered sectarian and divisive.<sup>11</sup> Nonetheless, in Liberia, fears of fragmentation were valid. The Republican Party, on the one hand, consisted of settlers in commercial centres along the coast who originated in the upper US South,<sup>12</sup> and was made up primarily of Americo-Liberians with mixed African and European ancestry (the mulattoes); the Opposition Party, on the other hand, comprised those in outlying agricultural towns who hailed from the lower US South,<sup>13</sup> and consisted mainly of dark-skinned Americo-Liberians.<sup>14</sup> In 1868, recalling the recent assassination of US President Abraham Lincoln as an example of the possible outcome of partisan politics, Liberian President James S Payne warned against the dangers of “ultra party spirit” which had fuelled intense political rivalry, electoral manipulation, and intimidation of opposition in a previous election:

Let us ask ourselves what effect, what consequences, will probably follow a biennial repetition of the scenes and doings in the last election? Let political parties exist. They are capable of exerting a fine effect upon the country and the government. But they should be restrained from unlawful excesses. The violation of the law to achieve success should be regarded by all good citizens as a dangerous expedient, if not an omen of a future career.<sup>15</sup>

But party politics were here to stay, and no amount of criticism could consign it to oblivion. If anything, it was emboldened and would soon become entrenched – thanks to the prevailing factionalised social order. In 1869, the TWP was formed in the township of Clay-Ashland in response to the

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10 Ibid.

11 CM Fombad, “Conceptualising a Framework for Inclusive, Fair and Robust Multiparty Democracy in Africa: The Constitutionalisation of the Rights of Political Parties”, 48 (2015) *Verfassung in Recht und Übersee*, pp 3–27, at p 6.

12 Burrowes, *supra* n. 7, p 84.

13 Ibid.

14 G Zoegan, “The True Whigs Take Power”, *LiberiaInfo*, 26 September 2024, <https://liberiainfo.dukaw.com/true-whigs-take-power/> (accessed 16 March 2025).

15 Burrowes, *supra* n. 7, p 85.

dominance of the country's capital, Monrovia, in national and county politics.<sup>16</sup> This coastal-rural dimension fuelled the emergence of a grassroots movement that found expression in the TWP, which in 1870 ascended to power with the election of Edward J Roye. The TWP duly extended the right to vote to the unpropertied as well as to indigenes in contravention of principles in the Constitution.<sup>17</sup> Roye, however, was replaced following a civilian overthrow in 1871 on account of, among other things, his attempts to extend the terms of elective offices and refusal to step down following electoral defeat.<sup>18</sup> The TWP returned to power in 1878 in the wake of the decline of the Republican Party, and from there on dominated the political landscape for more than a century, in the process making Liberia virtually a one-party state. At the same time, skin-colour distinctions had dissipated by the close of the nineteenth century as political actors came to be subsumed within the TWP.<sup>19</sup>

## 2.2 Century-long rule by a single party

The Americo-Liberian hegemony lasted 133 years (1847–1980), with the period spanning 1878 to 1980 marking uninterrupted rule by the TWP.<sup>20</sup> Indigenes remained consigned to the periphery, given that no major attempts were made to institute pluralism; such tokenistic democratic gestures as there were, served to benefit the ruling class. By 1904, nearly six decades after independence, indigenes became eligible for citizenship;<sup>21</sup> by 1907, the two-year presidential term was extended to four years following several

16 Ibid, p 74.

17 Ibid, p 86. The 1847 Constitution restricted property ownership to citizens; since indigenes were not eligible for citizenship, they therefore could not own property.

18 Ibid, p 89. Roye was arrested on 28 October 1871 by a mob – said to consist mainly of opposition members – and imprisoned. A riot had broken out between his supporters and those of the opposition earlier that month. Roye died a year later under disputed circumstances while attempting to escape from prison. After the civilian overthrow, a junta “executive committee” ruled Liberia until the elections of 1872.

19 “Foreign Relations of the United States, 1951, The Near East and Africa, Vol. 5 (1951)”, *Office of the Historian*, n.d., <https://history.state.gov/historicaldocuments/frus1951v05/d722> (accessed 28 February 2024).

20 Zoegan, *supra* n. 14.

21 AM Micallef, *Liberia: Development and Resources*, New York, Nova Science Publishers (2011), p 108.

failed efforts in this regard;<sup>22</sup> and by 1912, the government had increased its influence in the interior where the majority of the indigenes lived, even though their assimilation into the democratic project remained superficial at best.<sup>23</sup> Thus, as political parties metamorphosed into a single political entity, the hegemonic order grew ever stronger, much to the detriment of the excluded indigene population.

The collapse of political competition in the 1890s has been ascribed to a number of factors. According to Ellis, it was due in part to the administration's undermining of the opposition through the political preferment of opposition leaders, and in part to the disposition of voters and leaders to be on the winning side.<sup>24</sup> More importantly, Ellis cites economic dependence as the foundation of the one-party system. According to him, decline in the price of coffee – the country's staple industry – pushed formerly self-sustaining planters into abandoning their plantations in favour of politics and office-seeking.<sup>25</sup> In the process, the opposition was weakened to the point of political death.

Three minority parties sprang up between 1923 to 1943 but to no avail.<sup>26</sup> For example, Thomas JR Faulkner founded the Peoples Party, which vainly opposed the TWP in 1923 and 1927. As before, inadequate financial resources were a serious setback. While persons leading organised opposition to the TWP were financially independent of the establishment, their resources could not measure up to those of the TWP, which had acquired a fortune, including by requiring that government employees make their salary checks payable to it at least once a year.<sup>27</sup> Electoral corruption also stifled fair competition. For instance, the election of 1927 gained notoriety in the *Guinness World Book of Records* as the most corrupt and fraudulent in history.<sup>28</sup> Although less than 15,000 persons were registered to votes, the incumbent president, Charles DB King, garnered 243,000 votes while

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22 Burrowes, *supra* n. 7, p 84.

23 GW Ellis, "Political Institutions in Liberia", 5 (1911) *The American Political Science Review*, pp 213–223, at p 218.

24 *Ibid*, p 216.

25 *Ibid*.

26 "Foreign Relations of the United States", *Supra* n. 19.

27 *Ibid*.

28 FPM van der Kraaij, "The 1927 Presidential Election:", *Liberia Past and Present*, n.d., <https://liberiapastandpresent.org/1927ElectionsMF.htm> (accessed 14 March 2025).

his opponent received 9,000.<sup>29</sup> Following King's resignation in disgrace in 1930 over a trade-labour scandal, he founded the Unit Whig Party but was defeated in 1935 by the TWP candidate, Edwin Barclay.<sup>30</sup> Barclay succeeded in amending the Constitution to extend his four-year term to eight years. His successor, William Tubman, was opposed in the 1943 elections by James Cooper of the Democratic Party.<sup>31</sup> Tubman would perpetuate TWP rule for the next 27 years.

### 2.3 Multipartyism on the horizon

Political conditions began to ripen for inclusivity as the years passed, with the mood of the times demanding the political participation and involvement of all citizens in governance. On the international scene, Liberia was one of four African states to sign the charter establishing the United Nations in 1945, the others being Egypt, South Africa, and Ethiopia.<sup>32</sup> Recognition of civil and political rights expanded as the country endeavoured to improve its image.<sup>33</sup> Although the property ownership requirement for voters was maintained, the right to vote and participate in elections was extended in 1946 to indigenes and women.<sup>34</sup> Regionally, anti-colonial liberation movements began to emerge, aiming to combat oppression akin to that suffered by indigenous Liberians. In 1964, indigenous tribes were accorded representation in the legislature.<sup>35</sup> This built upon efforts by President Edwin J Barclay to integrate the interior, including through effective occupation of the interior by establishing physical presence and control

29 W Osoro, "Most Rigged Elections Ever: He Got 243,000 Votes in Country of Less Than 15,000 Registered Voters!", *The Standard*, n.d., <https://www.standardmedia.co.ke/entertainment/africanews/article/2001247031/most-rigged-elections-ever-he-got-243000-votes-in-country-of-less-than-15000-registered-voters> (accessed 22 February 2024).

30 "Foreign Relations of the United States", *supra* n. 19.

31 Ibid.

32 F Kuwunu, "Four African Countries at the Founding of the UN in San Francisco in 1945", *Africa Renewal*, 28 October 2020, <https://africarenewal.un.org/en/magazine/for-african-countries-founding-un-san-francisco-1945> (accessed 24 March 2025).

33 "About the mission", *Liberia Permanent Mission to the UN*, n.d., (accessed 16 March 2025) <https://www.pmun.gov.lr/index.php/about-us>.

34 "Constitutional History of Liberia", *ConstitutionNet*, n.d., <https://constitutionnet.org/country/liberia> (accessed 20 February 2024).

35 CM Waugh, *Charles Taylor and Liberia: Ambition and Atrocity in Africa's Lone Star State*, London, Zed Books (2011), p 40.

through administrative structures and deployment of the Liberia Frontier Force.<sup>36</sup> After William Tolbert succeeded Tubman in 1971 as president, he incorporated indigenes in key positions in government.<sup>37</sup>

These overtures went little further than that, however, as the TWP clung to power and the door to pluralism remained shut. Indeed, grassroots mobilisation that threatened the TWP establishment was quickly suppressed. In 1950, Didwho Twe, an indigenous Liberian who garnered much support from indigenes, formed the United People Party (UPP), but the party's application for certification was rejected on the grounds that its membership did not meet the required number of members.<sup>38</sup> Twe himself was soon arrested on allegations of sedition but later released.<sup>39</sup>

The presidential elections of 1951 marked a new phenomenon, as Tubman ran unopposed. Twe was prevented from participating in the elections on the legal ground that he was not registered more than 60 days prior to the elections as a candidate of the Reformation Party, which had been joined by the UPP. Although these machinations served their purpose, it was not long afterwards that conditions began to change. For instance, Albert Porte, a teacher and pamphleteer, raised the consciousness of society, as he criticised government corruption and the extensive authority of the presidency.<sup>40</sup> At the same time, elements within the establishment were growing desirous of a multiparty or bi-party system of politics. As the Liberian ambassador to the US, Charles, King once stated that "loyal, sincere, constructive, and patriotic opposition must be encouraged".<sup>41</sup> President Tubman unofficially said that there would be two political parties in Liberia before he relinquished power.<sup>42</sup>

In 1970, the Student Unification Party was founded, and soon became active in demanding democratic transformation.<sup>43</sup> Meanwhile, the death of President Tubman in 1971 and the political overtures made by his successor,

36 Ibid, p 44.

37 "President William R. Tolbert, Jr", *Liberia Past and Present*, n.d., <https://liberiapastandpresent.org/WilliamTolbert.htm> (accessed 19 February 2024).

38 "Foreign Relations of the United States", *supra* n. 19.

39 Ibid.

40 A Toure, "The Role of Civil Society in National Reconciliation and Peacebuilding in Liberia", *International Peace Institute* (April 2002), p 9.

41 "Foreign Relations of the United States", *Supra* n. 19.

42 Ibid.

43 "SUP Celebrates Its Anniversary & Explains Its Struggle History", *Democracy Watch*, n.d., <https://democracywatchonline.com/sup-celebrates-its-anniversary-explains-its-struggle-history> (accessed 3 March 2024).

William R Tolbert, to indigenous Liberians were critical in paving the way for multipartyism.<sup>44</sup> In 1973, the Movement for Justice in Africa was established by a group of students and professors of the University of Liberia, while the Progressive Alliance of Liberia was founded in the US in the next year.<sup>45</sup> These groups worked together to mobilise grassroots support in agitation for political reform. On 14 April 1979, protests against increases in the price of rice led to the death of 200 protesters and left another 700 injured.<sup>46</sup>

A watershed in the country's politics occurred on 12 April 1980, when 28-year-old Master Sergeant Samuel Doe assumed state power through a military coup d'état that left President Tolbert murdered.<sup>47</sup> Doe became the first head of state of exclusively indigenous heritage, ending 133 years of Americo-Liberian rule.<sup>48</sup> He announced the formation of the Peoples' Redemption Council (PRC) and began to rule the country by military decree.<sup>49</sup> Decree No. 2 of the PRC suspended the Constitution and declared martial law.<sup>50</sup> As Article I of the Constitution, entitled "Declaration of Rights", was thereby also suspended, this affected the exercise and enjoyment of rights by all, including the right of association as a political party.<sup>51</sup>

### 3. Constitution-making and party constitutionalisation in Liberia

#### 3.1 The 1847 Constitution and later developments

There have been two phases of constitution-making in Liberia's 176-year history, with the constitutions of 1847 and 1986 being their products. Nonetheless, constitution-making predates the Liberian state, given that constitutional politics emerged for the first time in 1839 when settlements,

44 Toure, *supra* n. 40, p 9.

45 Ibid.

46 Waugh, *supra* n. 35, p 63.

47 B Marmon, "25 Years after His Demise, Samuel Doe Continues to Cast a Long Shadow across Liberian Politics", *African Arguments*, 9 September 2015, <https://africanarguments.org/2015/09/25-years-after-his-demise-samuel-doe-continues-to-cast-a-long-shadow-across-liberian-politics> (accessed 3 March 2024).

48 Ibid.

49 GW Schmidt, "The New Constitutional Developments in the Republic of Liberia", 14 (1981) *Verfassung und Recht in Übersee*, pp 243–268, at p 250.

50 Ibid.

51 Ibid.

governed by the American Colonization Society (ACS), united to form the Commonwealth of Liberia.<sup>52</sup>

Prior to the establishment of the Commonwealth, the 1820 and 1824 constitutions promulgated by the ACS were used in administering the colonies. These constitutions were not the outcome of deliberation by settlers, however, and scarcely reflected their concerns and aspirations. In a bid to defuse rising tensions among settlers about their limited role in administration, the ACS held a convention to allow settlers to propose constitutional amendments. This move in 1839 was the first attempt at participatory constitution-making. Delegates at the convention did not hesitate in crafting a new constitution, known as the Monrovia Draft, which in effect expanded opportunities for self-rule.<sup>53</sup> However, unwilling to grant self-rule, the ACS ignored the Monrovia Draft and turned to Thomas Buchanan, governor of the Bassa Cove settlement, appointed him as governor of Liberia in 1839, and tasked him with drawing up a new constitution.<sup>54</sup> Buchanan's draft was approved by the ACS and became the last colonial constitution.<sup>55</sup> Nearly a decade would pass before another opportunity arose for the settlers to find a voice, summon a renewed spirit of nationalism, design a constitution, and ultimately declare independence.

In July 1847, 12 delegates from the three settlements comprising the Commonwealth gathered at a constitutional convention to write Liberia's first constitution.<sup>56</sup> Details about the convention are scant. Original source materials were never published, and the official minutes and two private

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52 Founded in 1816, the ACS led efforts to repatriate freed slaves to present-day Liberia. Persons repatriated lived in settlements governed by the colonial constitutions of 1820 and 1824. When Montserrado, Bassa Cove, and Mississippi in Africa settlements formed the Commonwealth, albeit still under the direction of the ACS, participatory constitution-making emerged. Meanwhile, it is to be noted that Maryland in Africa did not form part of the conglomerate until its annexation by Liberia in 1854.

53 J Cash, "A Purer Form of Government: African American Constitutionalism in the Founding of Liberia", 19 (2021) *Journal of Transatlantic Studies*, pp 408–440, at p 415.

54 The draft retained the ultimate political authority of the ACS and its power to appoint the governor. Nonetheless, it provided that the lieutenant-governor and six councillors would be elected by the settlers. The councillors would also, with the governor, make up the legislative branch. It provided for a separate judiciary, an impeachment process for the governor and other officials, and a list of protections resembling a bill of rights. However, it restricted citizenship of the colony to "coloured persons" and suffrage to citizens who owned property and paid taxes. See Cash *supra*, n. 53, p 415.

55 Ibid, p 416.

56 Ibid, p 418.

diaries have not been found.<sup>57</sup> Additionally, the long-standing assumption that the Constitution was written by Simon Greenleaf, a renowned constitutional lawyer from Harvard, contributed to neglect by scholars of local contributions to the document.<sup>58</sup> Contemporary scholarship, however, suggests that the 1847 Constitution was a product of local design rather than simply a replica of the US Constitution, as had been suggested earlier.<sup>59</sup>

First, the Declaration of Independence produced by the Convention was entirely of local origin, while 34 per cent of the Constitution has not been traced to any existing documents, meaning, as such, that it was probably of local origin.<sup>60</sup> Secondly, although not generally schooled in matters of constitutional law, delegates possessed enough relevant education and expertise to enable them contribute to the making of the 1847 Constitution. All were literate, several were full-time educators, some were newspaper editors, lawyers, and judges,<sup>61</sup> and eight held high church offices.<sup>62</sup> Thus, although Greenleaf drafted the Constitution,<sup>63</sup> delegates made substantial inputs. Even where sections were borrowed from elsewhere, they were appropriated in keeping with local as well as contemporaneous worldviews rooted in three intellectual traditions: Christianity, republicanism, and black nationalism.<sup>64</sup> For instance, one account describes the deliberations on the length of the presidential term in these words: “After a great deal of debating, it was resolved that the President be elected for two years.”<sup>65</sup> A unitary republic was preferred over federacy, and the executive, legislative, and judicial branches of government were recognised.<sup>66</sup> Citizenship and property ownership were limited to “persons of colour”,<sup>67</sup> while the proper-

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57 CP Burrowes, “Black Christian Republicans: Delegates to the 1847 Liberian Constitutional Convention”, 14 (1989) *Liberian Studies Journal*, pp 64–89, at p 64.

58 Ibid.

59 AJ Beyan, *The American Colonization Society and the Creation of the Liberian State: A Historical Perspective, 1822–1900*, Michigan, University Press of America (1991), p 95.

60 Burrowes, *supra* n. 57, p 65.

61 Cash, *supra* n. 53, p 418.

62 Burrowes, *supra* n. 57, p 64.

63 Schmidt, *supra* n. 49, p 245.

64 Burrowes, *supra* n. 57, p 66.

65 J Cash, *supra* n. 53, p. 418.

66 Liberia Constitution of 1847, Articles I and II.

67 Liberia Constitution of 1847, Article V, section 13.

ty of a woman before marriage was protected as distinctly hers.<sup>68</sup> Slavery and the trade in slaves were outlawed.<sup>69</sup>

Notwithstanding the outcome of the 1847 Constitution and the many virtues of the constitution-making process, the picture is not unblemished. With only 12 delegates attending the convention, it is safe to conclude that the Constitution did not emerge from widespread public consultation. It appears that settlements were represented in proportion to their populations, with six delegates for Montserrado and its 2,000 inhabitants, four delegates for Bassa's 1,000, and two delegates from Sinoe and its 300 inhabitants.<sup>70</sup> It is unclear, however, whether delegates were elected by inhabitants or selected in any such manner that provides due legitimacy. Assuming the delegates were a true representation of the people of the Commonwealth, indigenes – who constituted the majority in the territory – were left out of the convention. They did not participate despite the fact that, at the time, 500 of them had been recognised officially as citizens forming part of the 3,300-person population of the Commonwealth.<sup>71</sup> Yet the Constitution was binding upon indigenes for the 133 years that followed. Indigenes assimilated into the settler-fold still did not get a chance at the table, as all of the delegates hailed from the settler class. As a result, the language of the Declaration of Independence and the Constitution echoed the harrowing experiences of settlers in the US and advanced their aspirations, whereas the indigenes were “othered”.<sup>72</sup>

Political parties were not acknowledged in the 1847 Constitution. The words of Hilary Teage, a delegate to the Convention, condemning the “rage and rancour of party spirit” as “deforming” constitutions, suggest that the country’s founders sought to keep the republic free of party politics.<sup>73</sup> Notwithstanding the shortcomings and omissions of the 1847 Constitution, constitutional amendments took place over the course of history to address injustices and other gaps. For instance, as mentioned earlier, amendments

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68 Liberia Constitution of 1847, Article V, section 10. This banned coverture – the practice whereby a woman’s property became her husband’s property upon marriage – and dictated that a married woman would continue to own property in her own name after marriage as well as acquire personal property during the marriage.

69 Liberia Constitution of 1847, Article I, section 4.

70 Burrowes, *supra* n. 57, p 65.

71 Indigenes persons could become citizens only after adopting the “civilised” ways of the settlers. See Burrowes, *supra* n. 57, p 65.

72 See Liberia Constitution of 1847, Article V, sections 14 and 15.

73 Cash, *supra* n. 53, p 428.

to the 1847 Constitution saw the recognition of the citizenship rights of the indigenous population and extensions of the presidential term of office. Meanwhile, other proposals were unsuccessful. For example, a proposal by President Tolbert in 1975 to discard property requirements for suffrage resulted in a bill being passed by the House of Representatives, but it was rejected by the Senate in 1977, thereby preventing a referendum on the issue.<sup>74</sup> During a mayoral election for Monrovia in 1979, there were renewed calls for the Senate to pass the bill.<sup>75</sup> In 1979, Tolbert also proposed an amendment that would grant citizenship to persons of non-Negro descent.<sup>76</sup> The 1980 coup brought discussion of all these amendments to an abrupt end.<sup>77</sup>

### 3.2 The 1986 Constitution and later developments

In March 1981, Doe, then leader of the PRC, appointed a 25-person national constitutional commission from a cross-section of Liberian society to draft a new constitution.<sup>78</sup> Social conditions ripened in favour of multiparty democracy during this period. Although the citizenry had been unshackled from TWP domination, they remained haunted by the excesses of a military regime with anti-democratic propensities. Hence, there was huge public clamour for a constitution informed and improved through consideration of the shortcomings of the previous 1847 Constitution as well as the excesses of the military junta. The desire by the junta to extend the presidential term, prevent multiparty competition, and enable rule by executive fiat provided impetus for pushback.<sup>79</sup> Conditions under the military regime also fuelled support for provisions in the bill of rights, including the right to due process of law, the writ of *habeas corpus*, freedom of movement, freedom of information and access to state-owned media, and academic freedom.<sup>80</sup> Furthermore, treason was clearly defined, while a claims court

74 Schmidt, *supra* n. 49, p 247.

75 Ibid.

76 Ibid, p 246.

77 Ibid.

78 Ibid, p 265.

79 A Sawyer, "The Making of the 1984 Liberian Constitution: Major Issues and Dynamic Forces", 12 (1987) *Liberian Studies Journal*, pp 1–15 at p 8.

80 Ibid, p 5.

was provided for to enable citizen hold the government liable for damages done by it.<sup>81</sup>

Nonetheless, the constitution-making process did not yield the output anticipated by many. This was due in significant part to the later capture of the process by politicians, including leaders of the military regime who harboured political ambitions.<sup>82</sup> As a result, contrary to the draft prepared by the constitutional commission, the final draft passed in the referendum strengthened presidential authority, eliminated key autonomous commissions, removed provisions barring military personnel from participating in politics, and instituted a six-year tenure for the President.<sup>83</sup> Meanwhile, provisions on political parties appeared in the 1986 Constitution for the first time. An entire chapter – Chapter Eight – is dedicated to matters relating to political parties and elections.

In addition, referendums have been held to amend certain provisions of the new Constitution. A 2011 referendum resulted in a change in the criteria for winning non-presidential elections – namely, from an absolute majority to a simple majority of votes cast.<sup>84</sup> In a referendum held in 2020 and boycotted by the opposition, all eight propositions failed to meet the requirement for amendment.<sup>85</sup> The opposition had suspected that the proposition on reducing the length of a presidential term was a ploy to lengthen then President George Weah's stay in office on the basis that the amendment would have reset his term in office.<sup>86</sup> Notwithstanding efforts

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81 Ibid.

82 Most of those elected to the Constitutional Advisory Assembly responsible for reviewing the draft constitution prepared by the constitutional commission were political actors. In 1983, the Commission was dissolved without prior notice. It later became clear that the ambitions of its members dovetailed with those of the military head of state. The final constitution reflected these interests, as key provisions in the draft were removed and others added. See Sawyer, *supra* n. 80, p 15.

83 Ibid, p 15.

84 “Liberia: Supreme Court Ratifies a Constitutional Amendment”, *Library of Congress*, 27 September 2011, <https://www.loc.gov/item/global-legal-monitor/2011-09-27/liberia-supreme-court-ratifies-a-constitutional-amendment> (accessed 3 March 2024).

85 H Karmo, “Liberia: Referendum Fails to Meet Constitutional Requirement for Passage”, *FrontPage Africa*, 1 April 2021, <https://frontpageafricaonline.com/amp/news/liberia-referendum-fails-to-meet-constitutional-requirement-for-passage> (accessed 16 April 2024).

86 F Poquie and K Hoiye, “Liberia’s George Weah Fails to Win Extra Time in Referendum”, *Bloomberg*, 2 April 2021, <https://www.bloomberg.com/news/articles/2021-04-02/soccer-star-leader-fails-to-win-extra-time-in-liberia-referendum> (accessed 24 March 2025).

aimed at ensuring that the Constitution reflects contemporary realities and aspirations, the place of political parties has attracted little consideration.

But just how entrenched are the rights, roles, and responsibilities of political parties in the new Constitution? Does the latter provide for a free and fair competitive political system? To what extent does it protect the electoral management body from partisan control and manipulation? Such an inquiry is crucial, as the presence of free and vibrant political parties that are allowed to compete openly for political power is fundamental for the existence of a genuine multiparty constitutional democracy.<sup>87</sup> Thus, the argument has been made for a solid constitutional framework that empowers political parties to compete (positive constitutionalism) and protects them against manipulation aimed at preventing fair competition (negative constitutionalism).<sup>88</sup> We will now explore the Liberian case.

### 3.3 Party constitutionalisation in Liberia

There is no generally agreed framework for analysing constitutions in terms of how political parties' rights are entrenched. However, a threefold classification has been used for examining party constitutionalisation in African constitutions.<sup>89</sup> This approach examines constitutions for their recognition of political pluralism (status provisions), the scope of rights and duties imposed on political parties (ancillary-rights provisions), and the regulation of the various processes in which political parties are involved (political-process provisions).<sup>90</sup>

#### 3.3.1 Status provisions

Article 77 of the Constitution not only recognises political parties but also contains provisions as to their basic regulation. It recognises the importance of political parties in expressing ideas and “advocating the political opinions of the people”. In doing so, it provides for the establishment of political parties and outlaws any laws or measures with the “effect of

87 Fombad, *supra* n. 11, p 4.

88 Ibid, p 4. See also CM Fombad, “An Overview of Political Party Constitutionalisation under Contemporary African Constitutions”, in this volume.

89 Ibid.

90 Ibid.

creating a one-party state”. Thus, although multipartyism is not explicitly provided for, the freedom to establish political parties and the negation of a one-party system implicitly guarantee political pluralism. In addition, Article 78 of the Constitution defines a political party and provides for its qualification, establishment, or dissolution. It defines a “political party” as an association whose activities include “canvassing for votes on any public issue or in support of a candidate for elective public office”. To qualify as a political party, an association must meet a required minimum of 500 qualified voters in each of at least six counties.

Articles 79 and 80 of the Constitution include further provisions relevant to political parties such as minimum registration requirements,<sup>91</sup> membership,<sup>92</sup> headquarters location,<sup>93</sup> party elections and notification of amendment to party constitution,<sup>94</sup> the prohibition of ethnic and religious connotations,<sup>95</sup> the denial or revocation of registration for use of force or coercion,<sup>96</sup> or seeking to abolish democracy.<sup>97</sup> While these provisions pay attention to the subject of political parties, some observers hold the view that the Constitution ought to stick to basic requirements and not delve into such details, which could be addressed by a subsidiary legislation such as a law on political parties.<sup>98</sup> Yet these and other provisions set a critical basis for party entrenchment.

### 3.3.2 Ancillary-rights provisions

The Constitution gives political parties a number of ancillary-rights by virtue of their existence. Parties have legal personality, have the capacity to own property and hold accounts, and can sue and be sued.<sup>99</sup> While similar qualities are bestowed on businesses and non-profit organisations

91 Liberian Constitution of 1986, Article 79(a).

92 Ibid, Article 79(b).

93 Ibid, Article 79(c).

94 Ibid, Article 79(e).

95 Ibid, Article 79(d).

96 Ibid, Article 80(b).

97 Ibid, Article 80(a).

98 See “Briefing Paper on Recommendations for Constitutional Reform”, *EC-UNDP Electoral Assistance*, 18 February 2019, <https://www.ec-undp-electoralassistance.org/wp-content/uploads/sites/18/2019/02/ec-undp-jtf-liberia-resources-recommendations-for-constitutional-reform-final.pdf> (accessed 29 February 2025).

99 Liberian Constitution of 1986, Article 79(b).

by the Associations Law of Liberia, political parties draw their legal capacity directly from the Constitution. In furtherance of a political party's capacity to sue, the Constitution provides that denial of party registration by the National Elections Commission (NEC) can be challenged in the Supreme Court.<sup>100</sup> A political party also has the right to challenge election results at the NEC and up to the Supreme Court.<sup>101</sup> The right of access to state-owned media is guaranteed, although this right applies to the entire citizenry and is not specific to political parties.<sup>102</sup>

A framework for party and campaign financing is also provided in the Constitution. Within this arrangement, public funding of political parties is not provided for. Likewise, parties have the right to receive funds for their activities, but there is an express prohibition against receiving funds from citizens or organisations not of Liberian nationality or origin; the same applies to funding from corporate business organisations and labour unions.<sup>103</sup> Parties, furthermore, are not allowed to hold funds or other assets outside of Liberia, or to retain funds sent from abroad unless by Liberians.<sup>104</sup> Any funds received in contravention of the restriction have to be transferred to the NEC within 21 days of receipt.<sup>105</sup> Parties are required to file a report to the NEC on all funds received from abroad.<sup>106</sup> They are also required to publish and submit to the NEC a detailed statement of assets and liabilities, including funding sources and lists of expenditures, as at 1 September of each year.<sup>107</sup> The NEC in turn is authorised to order certified audits of the financial transactions of political parties.<sup>108</sup> Penalties for violations are not provided in the Constitution, though, but left to legislative enactments and administrative regulations.<sup>109</sup>

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100 Ibid.

101 Ibid, Article 83(c).

102 Ibid, Article 15(d).

103 Ibid, Article 82(a).

104 Ibid, Article 82(b).

105 Ibid.

106 Ibid.

107 Ibid, Article 83(d).

108 Ibid, Article 82(c).

109 Ibid, Article 84.

### 3.3.3 Political-process provisions

A central institution in the electoral process is the NEC, the management body responsible for the organisation of elections. It is, however, not entrenched in the Constitution. The NEC is established by a single line in the Constitution without any provisions as to its governance, which is left to enactment by the legislature.<sup>110</sup> Thus, this body is left vulnerable to political interference owing to the lack of constitutional entrenchment of the following key elements: the qualifications necessary for persons to serve as commissioners; vetting requirements; commissioners' immunity from prosecution related their functions; the protection of their remuneration; their tenure; grounds and processes for removal; operational and financial autonomy; and gender representation.

What the Constitution does refer to is the form and day of voting, electoral constituencies, and criteria for winning elections, as well as procedures for resolving electoral disputes. Elections are held by secret ballot.<sup>111</sup> In regard to electoral constituencies, voters have the right to change constituency and vote by absentee ballot.<sup>112</sup> The Constitution is also specific as to when legislative and presidential elections are to occur, namely the second Tuesday in October of each election year.<sup>113</sup> Article 83(b) – which previously provided that all elections of public officers are determined by an absolute majority of votes cast – has been amended to allow for simple majority in non-presidential elections. In presidential elections, the two candidates with the highest number of votes face-off in a run-off if no absolute majority is attained on the first ballot.<sup>114</sup>

As regards dispute resolution, specific timeframes are stipulated for the announcement of results, as well as submission of complaints or appeals. Results are to be declared no later than 15 days after ballots are cast, and a political party has the right to contest the results no later than seven days after they are announced.<sup>115</sup> The NEC is then required to hear the complaint and render a decision within 30 days. Appeals against the NEC's decisions are made to the Supreme Court no later than seven days after

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110 Ibid, Article 89.

111 <sup>118</sup> Ibid, Article 77(b).

112 Ibid, Article 80(c).

113 Ibid, Article 83(a).

114 Ibid, Article 83(b).

115 Ibid, Article 83(c).

they are declared.<sup>116</sup> Thereafter, the NEC is required to forward case documents to the Supreme Court within seven days, and the latter, to hear and decide the matter within seven days.<sup>117</sup>

As seen in this analysis, the Constitution recognises political parties and implicitly guarantees multipartyism; it also grants rights to political parties, and provides the basic framework for electoral processes. Nonetheless, the usefulness of these provisions depends primarily on how they are complied with in practice. In this regard, in view of the role of the legislature in enacting laws that give effect to the Constitution, and the role of the Supreme Court in interpreting the Constitution, understanding multipartyism in Liberia requires further analysis of the legal framework. The section that follows is dedicated to this inquiry.

#### 4. Multiparty democracy in practice

##### 4.1 Overview

Liberia's experience of multiparty democracy is fairly recent. Its first truly multiparty elections were held in 1985, and featured four parties: the National Democratic Party of Liberia (NDPL), Liberia Action Party (LAP), Unity Party (UP), and Liberia Unification Party.<sup>118</sup> This initial brush with multipartyism did not go well, however. A military leader, Samuel Doe of the NDPL, was proclaimed the winner, with 50.9 per cent of votes, even though it was widely held that he had lost.<sup>119</sup> Most observers believed that

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116 Ibid.

117 Ibid.

118 Although elections prior to 1985 had featured two or more political parties, most of these parties were not viable and were inconsistent in their participation in elections, in addition to which the TWP dominated the political landscape. See "4 Liberians Run for President in Nation's First Multiparty Election", *New York Times*, 16 October 1985, <https://www.nytimes.com/1985/10/16/world/4-liberians-run-for-president-in-nation-s-first-multiparty-election.html> (accessed 16 November 2024).

119 B Harden, "Liberia's Incumbent Declared Winner in Disputed Election", *Washington Post*, 29 October 1985, <https://www.washingtonpost.com/archive/politics/1985/10/30/liberias-incumbent-declared-winner-in-disputed-election/fd180129-8dc3-4fe6-83ea-599242ceee83> (accessed 5 March 2024).

Doe garnered only half of the votes attributed to him and that Jackson Doe of the LAP was the actual winner.<sup>120</sup>

On 24 December 1989, Charles Taylor launched an invasion of Liberia from the country's border with the Ivory Coast, ostensibly in reaction to corruption, nepotism, tribalism, and a failing democracy.<sup>121</sup> For the next 14 years, the country was afflicted by a civil war that claimed more than 200,000 lives. By the mid-1990s, Taylor's rebel group, the National Patriotic Front of Liberia (NPFL), held more than 95 per cent of Liberia, with Doe and Prince Johnson, a breakaway rebel leader, controlling parts of the capital.<sup>122</sup> Doe was gruesomely murdered by Johnson's forces in 1990 in the presence of a peacekeeping mission from the Economic Community of West African States (ECOWAS) sub-region.<sup>123</sup>

Three interim governments incorporating warring factions were established in the period spanning 1990 to 1997.<sup>124</sup> In August 1996, the fourteenth peace accord was consummated and led to presidential and legislative elections in July 1997.<sup>125</sup> In these elections, Taylor and his National Patriotic Party (NPP), the successor of the NPFL, won with a landslide of 75 per cent of votes,<sup>126</sup> including more than half of the votes in every county.<sup>127</sup> Legislative seats were allocated through proportional representation, with the NPP allocated 49 of 64 seats in the House of Representatives and 21 of 26 seats in the Senate.<sup>128</sup>

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120 D Harris, "From 'Warlord' to 'Democratic' President: How Charles Taylor Won the 1997 Liberian Elections", 37 (1999) *Journal of Modern African Studies*, pp 431-455, at p 431.

121 S Momodu, "First Liberian Civil War (1989–1996)", *Black Past*, 25 July 2016, <https://www.blackpast.org/global-african-history/first-liberian-civil-war-1989-1996> (accessed 16 April 2024).

122 Harris, *supra* n. 127, p 434.

123 "The Death of Samuel Doe", *BBC*, 25 September 2011, <https://www.bbc.co.uk/programmes/p00k69lp> (accessed 17 November 2024).

124 F Gerdes, *Civil War and State Formation: The Political Economy of War and Peace in Liberia*, Frankfurt am Main, Campus (2013), p 36.

125 Harris, *supra* n. 127, p 431.

126 Ibid.

127 Ibid, p 432.

128 The UP and the All Liberia Coalition Party, which came second and third, respectively, were the only other parties to be represented in both the House and the Senate. In addition, three other parties, the Alliance, the United People's Party, and the Liberian People's Party, gained seats in the House alone. See Harris, *supra* n. 127, p 435.

While most observers reported positively on the elections, the concerns that arose brought into focus the need to reinforce democratic processes. Notably, the playing field was unequal, given the immense resources at Taylor's disposal. The British observer mission, for instance, noted that "most parties attracted attention to their presidential candidates but lacked the finance or organization for effective campaigning";<sup>129</sup> in the Taylor campaign, by contrast, T-shirts and bags of rice flowed freely to voters. Taylor's radio station, Kiss FM, was also a major advantage, as it reached far beyond Monrovia and issued broadcasts throughout the night.<sup>130</sup> Concerns in this regard related to campaign finance controls and the need for state funding of political parties. Other concerns had to do with the lack of voter education, inadequate voter registration, and the disenfranchisement of about 650,000 refugees outside of Liberia.<sup>131</sup> Holding multiparty elections without civic voter education and a process that guarantees the registration of eligible persons calls into question of whether their outcomes could be considered truly democratic.

Taylor did not complete his term in office, as another crisis broke out few years after he took office and pushed him into exile in August 2003, leading to formation of a transitional government called the National Transitional Government of Liberia (NTGL).<sup>132</sup> Liberia's new electoral dispensation thus began in 2005, with the election of Africa's first female president, Ellen Johnson-Sirleaf of the LAP.<sup>133</sup> The success of the 2005 election has been attributed to two main factors: the absence of an incumbent, and the virtual absence of rebel forces from the ballot – the latter was due to the fact that the Comprehensive Peace Accord banned certain individuals in the NTGL from contesting in elections.<sup>134</sup> Despite the lack of an incumbent,

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129 Ibid, p 438.

130 Harris, *supra* n. 127, p 438.

131 Refugees who were unwilling or unable to return to Liberia were in all likelihood excluded from the elections for reasons related to logistics, costs, the desire to complete an election sooner rather than later, and the reluctance by Guinea and the Ivory Coast to allow voting in refugee camps.

132 K Vick, "Taylor Resigns, Leaves Liberia", *Washington Post*, 27 February 2024, <https://www.washingtonpost.com/archive/politics/2003/08/12/taylor-resigns-leaves-liberia/829c9533-e940-480d-a0fd-ec51a5b5ffef> (accessed 5 March 2024).

133 T Ford, "Ellen Johnson Sirleaf: The Legacy of Africa's First Elected Female President", *British Broadcasting Corporation*, 21 January 2018, <https://www.bbc.com/news/world-africa-42748769> (accessed 5 March 2024).

134 D Harris, "Liberia 2005: An Unusual African Post-Conflict Election", 44 (2006) *Journal of Modern African Studies*, pp 375–395 at p 375. Many rebel leaders pledged

however, the Coalition for the Transformation of Liberia (COTOL) is reported to have received significant government resources, as its leader, Varney Sherman, had been instrumental in the hasty signing of key NTGL deals.<sup>135</sup> Sherman's LAP, the mainstay of COTOL, also enjoyed the NTGL as a member.<sup>136</sup>

Sirleaf won a second presidential term in 2011 but ceded power in 2018 to George Weah of the Congress for Democratic Change (CDC) following the 2017 elections, marking Liberia's first democratic transfer of power in 73 years.<sup>137</sup> The country's most recent elections, in 2023, resulted in a second democratic transfer, this time following a tightly contested election in which Weah lost narrowly to Joseph Boakai of the Unity Party (UP) by a little more than 20,000 votes.<sup>138</sup>

With West Africa having been rocked by military coups and attempts to extend presidential term limits, Liberia hence stands out as a testament to the feasibility of multiparty democracy in the region. Nevertheless, given its not-so-distant history of one-party rule, military dictatorship, and civil war, care must be taken to ensure that the country remains on course. Because political parties are crucial to the democratic process, it is just as crucial that constitutional safeguards be in place to ensure fair and competitive electoral processes.

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support to other political parties. For example, Sekou Conneh, leader of Liberians United for Reconciliation and Democracy (LURD), contested in the election, but the challenge was ineffectual as his estranged wife and party co-leader, Aisha Konneh, supported Sirleaf.

135 Ibid, p 377.

136 Ibid.

137 "Seven Things to Know About Liberia's First Democratic Handover in 73 years", *TRT World*, 6 October 2017, <https://www.trtworld.com/middle-east/seven-things-to-know-about-liberias-first-democratic-handover-in-73-years-13096400> (accessed 5 March 2025).

138 M Garzeawu and F Chothia, "Joseph Boakai: Liberia's New President Takes on Tough Challenge", *British Broadcasting Corporation*, 22 January 2024, <https://www.bbc.com/news/world-africa-67995793/> (accessed 5 March 2024).

## 4.2 Political parties in perspective

Liberia has 46 registered political parties and coalitions.<sup>139</sup> This is reflective of multipartyism, although only to an extent. Of this number, only 20 fielded presidential candidates in the last elections.<sup>140</sup> This raises questions about party proliferation and its propensity to distract from the political process. A key issue is whether inactive political parties are serving the purpose of organising citizens to pursue causes and providing leadership options, or are being used instead by their handlers as means for negotiating patronage. Concerns like these are bolstered by the tendency for such parties to give endorsements during run-off elections and receive rewarding jobs in government thereafter. Indeed, it is evident that a majority of Liberia's parties lack the gravitas, finances, and organisation to be able to function independently, with many of them being little more than cults of personality that fade away when key leaders leave the scene. For example, the NDPL won the first multiparty elections but lost prominence when Samuel Doe passed away in 1990 and is now defunct. Similarly, the NAP declined in relevance with Charles Taylor's exit from power, even though it remains operational and continues to have a support base.

Thus, even though Liberia's framework allows for multiple parties, operational and political exigencies have served to narrow political contests, with fewer and fewer parties appearing on the ballot; conversely, mergers and coalition-building are increasingly becoming an indispensable feature of Liberian politics. The two leading political organisations are a prime example: while the new Unity Party is a product of a merger of the LAP, the Liberia Unification Party, and the UP in 2009,<sup>141</sup> the Coalition for Democratic Change is comprised of the NPP, Liberia People Democratic Party, and the CDC.<sup>142</sup> Furthermore, the absolute-majority standard for

139 National Elections Commission, "Statistics", <https://www.necliberia.org/> (accessed 5 March 2025).

140 O Saliu, "Liberia's Political Parties Hold Final Rallies Ahead of Polls", *Xinhua News Agency*, 9 October 2023, <https://english.news.cn/20231009/6862d6035f594fe8ba03c3316aafa4f9/c.html> (accessed 5 March 2025).

141 C Kelly, "Party Proliferation and Trajectories of Opposition: Comparative Analysis from Senegal", 50 (2018) *Comparative Politics*, pp 209–229.

142 V Kamara, "Liberia: NPP Plans Exit from the Coalition for Democratic Change", *FrontPage Africa*, 19 January 2024, <https://frontpageafricaonline.com/news/liberia-npp-plans-exit-from-the-coalition-for-democratic-change> (accessed 5 March 2024).

winning presidential elections on the first ballot has incentivised party collaboration. This has prevented a dominant political party from emerging and contributed to power alternation, particularly between the UP and Coalition for Democratic Change. For Boakai, the UP's candidate, to win the 2023 presidential elections, it took the endorsement of key parties that contested in the first round.<sup>143</sup> It is also important to note that in the new dispensation of multipartyism (that is, 2005 to the present), ruling parties have not had a majority of seats in the legislature,<sup>144</sup> a situation that has helped promote collaboration in the legislature across party lines.

While the constitutional entrenchment of political parties is critical to a free and fair political process, the parties themselves must endeavour to be viable if they are truly to benefit from constitutional safeguards. Having strong and enduring political parties depends very much on the institutional framework for party governance. The reason is that parties having, or seeking, state power in a democratic state should aspire to and uphold democratic values: one cannot give what one does not have; hence, intra-party processes prefigure the governance to be offered by political parties. Internal democracy, thus, is a function of the organisation of the party itself and how it interacts with its members, rather than of how it interacts with the state.<sup>145</sup>

As mentioned, the Constitution sets the minimum criteria of party membership at 500 qualified voters in each of at least six counties. However, the new Elections Law as amended 2014 changed this requirement by providing for a minimum of 500 qualified voters in each of at least 12 counties.<sup>146</sup> It is worth noting that the constitutional requirement was set when Liberia had only nine counties and not the 15 of today.<sup>147</sup> Arguably, these provisions aim to ensure that parties' membership spreads across at least two-thirds

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143 "Endorsements Epidemic Overwhelms Campaigns -CDC, UP Lobby Political Groups, Other Heavy Weights", *Analyst Liberia*, 3 November 2023, <https://analystliberiaonline.com/endorsements-epidemic-overwhelms-campaigns-cdc-up-lobby-political-groups-other-heavy-weights> (accessed 5 March 2024).

144 "NEC Policy Paper No. 6", *EC-UNDP Electoral Assistance*, 18 February 2019, <https://www.ec-undp-electoralassistance.org/wp-content/uploads/sites/18/2019/02/ec-undp-jtf-liberia-resources-nec-pp-political-party-functioning-31-01-19.pdf> (accessed 25 September 2024).

145 Y Mersel, "The Dissolution of Political Parties: The Problem of Internal Democracy", 4 (2006) *International Journal of Constitutional Law*, pp 84-113, at p 86.

146 1986 Elections Law, as amended in 2014, section 1(2)(c).

147 *Supra* n. 105.

of Liberia's counties.<sup>148</sup> Yet, although tending to reflect the spirit of the Constitution in the contemporary era, the new Elections Law contradicts the plain text of the Constitution. As such, there is a need for a constitutional amendment to reflect the new geography. Also, it remains unclear what mechanisms are employed by the NEC to ensure that membership rolls submitted by parties are verified.

There are records indicating that political parties and coalitions hold elections at least once every six years; what is doubted is the extent to which these elections are democratic. For instance, it is unknown whether primary elections were held by all parties or coalitions fielding candidates in the 2023 elections.<sup>149</sup> For example, the UP held endorsement events rather than primary elections, while other parties holding primaries principally used white ballots, as candidates ran unopposed.<sup>150</sup> Furthermore, parties have fallen short in ensuring women's participation in politics. Although parties recently agreed that a minimum of 30 per cent of candidates would be women, women's share of votes amounted only to 15 per cent in the last elections.<sup>151</sup>

Financing is also crucial to party governance. The Constitution, as discussed earlier, does not provide for public funding of political parties, even while it seeks to regulate the sources of party funds. There can be no denying that finances are important in electoral processes; as such, a robust multiparty system should have a place for public funding of political parties if these parties are to be vibrant, competitive, and not beholden to those who finance them. The Constitution prohibits funding from non-Liberian sources, businesses and trade unions, in addition to which campaign finance regulations also spell out what acceptable sources of campaign finance are, but reports show that these provisions are often

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148 Ibid.

149 Elections Coordinating Committee Liberia, "Only Six of the 35 Registered Parties and Coalitions' Primaries Were Observed by ECC – 2023 Parties Candidates' List are Generally Based on Consensus", <https://eccliberiacom.org/only-six-of-the-35-registered-parties-and-coalitions-primaries-were-observed-by-ecc-2023-parties-candidates-list-are-generally-based-on-consensus/> (accessed 6 March 2024).

150 Ibid.

151 Electoral Institute for Sustainable Democracy, "Liberia's Political Parties Fall Short of Gender Quota Commitment", *Electoral Institute for Sustainable Democracy*, 18 July 2023, <https://www.eisa.org/liberias-political-parties-fall-short-of-gender-quota-commitment/> (accessed 7 March 2024).

breached.<sup>152</sup> Levelling the playing field would entail financing from the state. In the absence of state funding, parties remain vulnerable to influence by wealthy donors; at the same time, those unable to find donors soon become irrelevant and virtually collapse. It may also be argued that, given poor compliance with the reporting requirements laid down in the Constitution, state funding of parties would impose a further duty to report on funding received.

### 4.3 Elections in practice

A key ingredient of a free and fair political process is the operation of the NEC, which sits at the heart of it all. Hence, the need for an independent, competent NEC cannot be emphasised enough. The Constitution establishes the NEC as an autonomous public commission,<sup>153</sup> while the Elections Law goes further to stipulate that it is “independent of any branch of the Government”.<sup>154</sup> The reality, however, is that the NEC has been established in such a manner as to render it vulnerable to manipulation by the incumbent government – thanks to the lack of constitutional provisions clearly providing for safeguards.

Although an autonomous commission, the NEC has complained on several occasions about its lack of funds. This is despite the fact that it is meant to receive funding at the beginning of every six months, specifically on 1 January and 1 July.<sup>155</sup> Shortage of funds compromises the independence and autonomy of the NEC, as it has to engage with members of the incumbent government for the allotments due it. Key, too, is the power of President to appoint NEC commissioners, a power often exercised in the absence of vetting procedures involving civil society, political parties, and other actors.<sup>156</sup> For the NEC to be truly independent, it would have to be entrenched more deeply in the Constitution, particularly in regard to questions of

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152 GB Quansah, “Integrity Watch Liberia Reports Violation in October 2023 Elections”, *Reports 231*, 30 October 2023, <https://reports231.com/integrity-watch-liberia-reports-violation-in-october-2023-elections/> (accessed 18 November 2024).

153 Liberian Constitution of 1986, Article 89(b).

154 1986 Elections Law, as amended in 2014, section 2(9).

155 *Ibid.*, section II(2).

156 “NEC Policy Paper No. 5: Principles for Election Management”, EC-UNDP, 31 January 2019, <https://www.ec-undp-electoralassistance.org/wp-content/uploads/sites/18/2019/02/ec-undp-jtf-liberia-resources-nec-pp-election-administration-final-31-01-19.pdf> (accessed 25 February 2024).

autonomy, vetting, appointment, tenure, and gender – as regards the latter, for example, the Elections Law does not provide benchmarks for gender representation on the seven-person Board of Commissioners.

As matters stand, then, the NEC is vulnerable to manipulation by the legislature and the executive. Given that it is a creature of statute, it is exposed to the possibility that the legislature could decide to amend or repeal the Elections Law that provides its operational framework. It is conceivable, for example, that an amended law could dissolve the NEC's Board of Commissioners; similarly, on the executive front, an incumbent government could use its control of resource allocation and appointments to the NEC to manipulate the latter in a manner prejudicial to the opposition. For instance, there is neither a limit on the number of times commissioners may be reappointed, nor an age limit set for their retirement. Thus, an incumbent government could keep reappointing a commissioner for all eternity as long as he or she works in its interests.

Importantly, the NEC also exercises quasi-judicial powers, albeit that some have questioned the rationale for allowing the NEC to review its own decisions. According to the Elections Coordinating Committee, Article 83(c) of the Constitution “creates conflict of interest and does not reflect transparency and impartiality in adjudicating electoral grievances and petitions in cases wherein [the] NEC is a respondent”.<sup>157</sup> Furthermore, a European Union election observer mission stated in its final report on the 2023 elections that “as electoral disputes are handled by the NEC, some stakeholders questioned its capacity to conduct hearings and appeals in an independent manner, as this arrangement can result in adjudications of complaints of the NEC against itself”.<sup>158</sup> Nonetheless, the right of appeal to the Supreme Court serves to address concerns about possible missteps by the NEC.

The Commission also plays another important role in elections: constituency demarcation. However, it has been handicapped in performing this task due to the failure of other government functionaries to play their part. Article 80 of the Constitution provides for the conduct of a census, as well as the determination of a population threshold per constituency by the legislature and the reapportionment of constituencies. The Supreme Court

157 European Union Election Observation Mission, *Liberia, 2023: Final Report*, <https://www.eods.eu/library/EU%20EOM%20LIB%202023%20FR.pdf> (accessed 20 February 2024).

158 Ibid.

of Liberia in the case, *Re: Constitutionality of the National Elections Commission Planned Conduct of Voters Registration without the Demarcation of Constitutional Electoral Constituencies*, held that a census is a precondition for the legislature to set a threshold and that such legislative action is in turn a precondition for boundary demarcation by the NEC.<sup>159</sup> Hence, the Court ruled that the NEC could not be held liable for the failure to demarcate constituencies since, in fact, a final census report had not been submitted to the legislature.<sup>160</sup> As a result, new constituencies were not drawn for the 2023 elections.

Here, it is important to note that a census constitutionally scheduled for 2018 was held only in 2022, but a few months prior to the elections. The decision by the Supreme Court essentially gives a green light to the executive to fail to deliver on preconditions so as to keep the NEC from demarcating boundaries. This has implications for fair representation in a democratic state, as it must necessarily be proportional to population limitations provided for by the Constitution.

As can be gleaned from the above, constitutional review has a crucial role to play in the democratic process. The Supreme Court of Liberia, using its power of judicial review, has reviewed several decisions by the NEC. Also, as a constitutional court, it has handed down rulings interpreting the Constitution, aspects of which border on the rights of political parties. In the case *Unity Party (UP) et al. v Collaborating Political Parties (CPP) et al.* (2022), involving the question of whether an agreement establishing a coalition of political parties can validly prohibit member political parties from disengaging and fielding candidates separately, the Supreme Court held that the right to associate, to dissociate, to refuse to associate, and to contest and participate in elections is fundamentally protected under articles 17 and 19 of the Constitution and cannot be curtailed by an agreement between parties.<sup>161</sup> The Court further asserted that a political party can be denied participation in an election only for a cause under law and not as consented to by the parties.

The Court then elaborated on the role of the NEC in ensuring that agreements or other filings by political parties are not reviewed perfunc-

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159 Supreme Court of Liberia, *Re: The Constitutionality of the National Elections Commission Planned Conduct of the Voters Registration*, 3 May 2023.

160 Ibid.

161 Supreme Court of Liberia, *Unity Party (UP) et al. v Collaborating Political Parties (CPP) et al.*, 3 June 2022.

torily but in such a manner as to establish whether any provisions are “manifestly against the letter, intent, and spirit of the Constitution”, and if so, deny such filing until said provision is amended or removed. Also, in the case *National Elections Commission et al. v Bility et al.*,<sup>162</sup> the Supreme Court held that where a complaint alleges fraud relating to tampering with legal instruments, or make declarations regarding the illegality of the constitution of a political party, the NEC lacks the power and authority to investigate the complaint – only the courts have such power and authority. Thus, it must be concluded that constitutional courts can exercise checks on election management bodies and political parties.

#### 4.4 The political environment

Credit for the survival of multiparty democracy in Liberia is due in good part to the constitutional, legislative, and regulatory frameworks that address the rights and responsibilities of political parties and define electoral processes. Further credit is due, however, to the determination of the Liberian people, including the military, to sustain the peace by discouraging and disengaging from anti-democratic activities. For instance, campaigning in the 2023 elections was largely peaceful, notwithstanding isolated incidents of violence.<sup>163</sup> The fact that four consecutive presidential elections, and six legislative elections, were held between 2005 to 2023 is testament to the conviction of the Liberian people, government and citizens alike.

Nonetheless, the situation has been less than perfect. This is evident in Freedom House’s Freedom in the World report of 2024, which classifies Liberia as “partly free” and assigns it a score of 64 out of 100 points (identical to the global average of 64).<sup>164</sup> Countries in the “partly free” category are regarded as electoral democracies. Liberia saw the largest improvement in score in Africa, having obtained four more points in 2024 over and above the 60 it scored in 2023.<sup>165</sup> According to the report, “political parties

162 Supreme Court of Liberia, *National Elections Commission et al. v Bility et al.*, 12 April 2023.

163 European Union Election Observation Mission, *supra* n. 165, p 6.

164 Freedom House, “Freedom in the World 2024: Liberia”, *Freedom House*, n.d., <https://freedomhouse.org/country/liberia/freedom-world/2024> (accessed 7 March 2024).

165 Freedom House, “New Report: Africa Marks a Decade of Decline in Freedom, with 2023 Being Marred by Electoral Violence and Civil Conflict”, *Freedom House*, 29 February 2024, <https://freedomhouse.org/article/new-report-africa-marks-decad>

generally do not face undue legal or practical obstacles that prevent them from forming or operating”.<sup>166</sup> This finding is corroborated by the 2023 election observation report of the European Union, which stated that the political freedoms of candidates and supporters were largely respected.<sup>167</sup>

Despite respect for the political freedoms of political parties, candidates, and their supporter, abuse of incumbency was cited as a problem in the 2023 elections. The NEC’s oversight of campaign finance regulation has been non-existent, thus allowing the then ruling coalition (the CDC) to employ state resources and distort the playing field.<sup>168</sup> For example, national and local level government staff campaigned during working hours, and government buildings and vehicles were used for campaign purposes.<sup>169</sup> Also, 84 per cent of time attributed to political contestants by the state-owned broadcaster, Liberia National Television, was allocated to the ruling CDC, while the UP, as the leading opposition party at the time, received under 5 per cent.<sup>170</sup> Similarly, the state-owned station, ELBC, allocated 70 per cent of time attributed to political contestants to the CDC.<sup>171</sup> Public facilities belong to the public, and not an incumbent political party; thus, members of the public, including parties, are entitled to benefit from the services provided.

The incumbent’s effective control of state-owned facilities to the exclusion of opposition parties ought to be addressed in order to level the field. Denying opposition parties the use of city halls, stadiums, billboards, and state-owned media is anti-democratic and must not be allowed to continue. For example, in December 2022, the Ministry of Youth and Sports, after receiving payment for use of the facility, denied use of the Samuel Kanyon Doe Sports Complex to the Collaborating Political Parties, ostensibly due to renovation works.<sup>172</sup>

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e-decline-freedom-2023-being-marred-electoral-violence-and (accessed 7 March 2024).

166 Freedom House, *supra* n. 172.

167 European Union Election Observation Mission, *supra* n.165.

168 Ibid.

169 Ibid, p 6.

170 Ibid.

171 Ibid.

172 “Youth and Sports Minister Says SKD Stadium Will Not Be Used for Any Rally”, *Smart News Liberia*, 6 December 2022, <https://smartnewsliberia.com/youth-and-sports-minister-says-sk-d-stadium-will-not-be-used-for-any-rally> (accessed 19 November 2024).

One major component of Liberia's political ecosystem is its civil society. There are 647 registered civil society organisations (CSOs), faith-based organisations, and community-based organisations in the country,<sup>173</sup> a number which is likely to be far greater if unregistered and informal grassroots organisations are also considered.<sup>174</sup> CSOs function as “civic intermediaries” between citizens and government because they have earned citizens’ trust and possess the networks and skills to mobilise citizens into action.<sup>175</sup> They work on a range of issues, including health, natural resources management, education, governance, and – in particular – elections.

In the 2023 elections, for instance, CSOs such as the Elections Coordinating Committee and the Liberia Elections Observation Network were involved at different stages of the electoral cycle. Observation missions from the African Union, ECOWAS, European Union, and US Agency for International Development also participated in election monitoring. Approximately 8,400 citizens and some 1,500 international observers were accredited to observe the second round of elections in 2023.<sup>176</sup> From voter registration to vote tallying, they identified glitches within the process and raised red flags. Other organisations were involved in civic voter education, raising awareness among citizens of the importance of voting and informing them about how to vote. Others yet, such as Local Voices Liberia, fact-checked campaign messages and messages on electoral fraud and election-related violence.<sup>177</sup> This was key for building voters’ trust in the electoral process. When voters are informed about their rights and responsibilities and trust the electoral process, they participate fully, including through poll-watching to protect the democratic process.

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173 “2022 Civil Society Organization Sustainability Index”, *Fhi 360*, (2023), p 33, <https://www.fhi360.org/wp-content/uploads/2024/02/csosi-africa-2022-report.pdf> (accessed 2 March 2024).

174 While non-governmental organisations in Liberia may register and operate freely, some of the registration and accreditation requirements are cumbersome, resulting in a large number of such organisations being unregistered.

175 A Ware, “The essential characteristics of Liberian civil society”, *Lilly Family School of Philanthropy*, 1 July 2020, <https://blog.philanthropy.iupui.edu/2020/07/01/the-essential-characteristics-of-liberian-civil-society> (accessed 7 March 2024).

176 European Union Election Observation Mission, *supra* n. 165, p 8.

177 *Ibid*, p 2.

#### 4.5 The military factor

Although Liberia has felt the debilitating effects of military dictatorships on democracy,<sup>178</sup> the military has, to a large extent, proven to be a transformed “force for good” despite isolated indiscretions. Its non-interference in political and electoral matters sets it apart from many of its counterparts in West Africa.<sup>179</sup> The professionalism of the military may be credited to a reform in 2006 that disbanded the then military and instituted stringent measures for recruitment to a newly constituted army.<sup>180</sup> An important aspect of the reform was the enactment of the National Defense Act, which limits the involvement of the Armed Forces of Liberia (AFL) in civilian affairs by setting out its duties, inter alia, as follows:

[T]he duties of the AFL in peacetime shall include support to the national law enforcement agencies when such support is requested and approved by the President. Such support shall include the exchange of information, personnel training, and mobilization and deployment of security contingents. At no time during peacetime, however, shall the AFL engage in law enforcement within Liberia, such function being the prerogative of the Liberia National Police and other law enforcement agencies ... The AFL shall intervene only as a last resort when the threat exceeds the capability of the law enforcement agencies to respond.<sup>181</sup>

Importantly, the AFL also has an order of merit that clearly lays out qualifications for military positions, as well as procedures for removal or filling of vacancies.<sup>182</sup> As a result, there is limited political interference in military affairs, with military leaders being required to operate with professionalism and independence.

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178 C Wratto, “Liberia Transferred Power Peacefully Again: 3 Reasons the Calm is Holding, and One Red Flag”, *The Conversation*, 23 January 2024, <http://theconversation.com/liberia-transferred-power-peacefully-again-3-reasons-the-calm-is-holding-and-one-red-flag-221656> (accessed 5 March 2024).

179 In Guinea, Mali, Burkina Faso, and Niger, the military has recently toppled constitutionally elected governments. In Nigeria, it has been conspicuous in political processes.

180 M Malan, *Security Sector Reform in Liberia: Mixed Results from Humble Beginnings*, Pennsylvania, US Army War College, Strategic Studies Institute (2008), pp 29–35.

181 2008 National Defense Act, section 2(3)(e).

182 “AFL Administers Officers’ Promotion Exam – Exercise Boldstriker 2018”, *Ministry of National Defense*, 2018, <https://mod.gov.lr/afl-administers-officers-promotion-exam-exercise-boldstriker-2018> (accessed 2 September 2024).

Be that as it may, when Freedom FM, a local media outlet, reported political division in the army during the 2023 elections, the army arrested and interrogated the outlet's owner, Sam Siryon, who was also the Deputy Director of the National Security Agency.<sup>183</sup> Siryon apologised.<sup>184</sup> Meanwhile, others criticised the military's arrest of a civilian as interference in civilian affairs and reminiscent of the dark days of military dictatorship.<sup>185</sup> Others yet argued that the action of the military was important in preventing incitement and polarisation of the army, which could have detrimental effects for the electoral process and the country at large. In any case, through its actions, the military leadership made a strong statement about the importance of its independence and its commitment to remain neutral in the political process.

This commitment was maintained and exhibited in crucial moments. In fact, the military chief, Major-General Prince C Johnson III, was unequivocal in encouraging electoral candidates and their supporters, regardless of status or affiliation, to use the courts in case of disenchantment and to refrain from "taking law into their own hands".<sup>186</sup> He stated that the AFL would intervene in cases the Liberia National Police could not handle, saying, "We will not allow anyone or a group of people to obstruct our hard-earned peace and democracy."<sup>187</sup> He is also on record as saying that the military's loyalty is, first and foremost, to the Liberian state and not to individuals.<sup>188</sup>

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183 "Freedom FM Apologizes to AFL for Dangerous Comment, as PUL Rebukes the Pro-Gov't Station", *News Public Trust*, 21 October 2023, <https://newspublictrust.com/freedom-fm-apologizes-to-afl-for-dangerous-comment-as-pul-rebukes-the-pro-govt-station> (accessed 8 August 2024).

184 Ibid.

185 "Liberia: Military Meddling in Civil Affairs: Condemning the Arrest of Deputy NSA Director Sam Siryon", *FrontPage Africa*, 23 October 2023, <https://frontpageafricaonline.com/editorial/liberia-military-meddling-in-civil-affairs-condemning-the-arrest-of-deputy-nsa-director-sam-siryon> (accessed 2 September 2024).

186 "Liberian Army Chief of Staff Says Some Citizens Urging Him to Overthrow Pres. Weah", *News Public Trust*, 7 December 2022, <https://newspublictrust.com/liberia-an-army-chief-of-staff-says-some-citizens-urging-him-to-overthrow-pres-weah> (accessed 8 August 2024).

187 Ibid.

188 F Sainworla, "At Liberia Media-Security Forum: AFL Chief of Staff Vows to Only 'Obey Legal Orders'", *News Public Trust*, 31 March 2022, <https://newspublictrust.com/at-liberia-media-security-forum-afl-chief-of-staff-vows-to-only-obey-legal-orders> (accessed 1 September 2024).

This commitment proved to be true even when the 2023 presidential elections became highly contested. Arguably, former President Weah's admission of defeat meant that the army's resilience was not put to the test by a call-up by the President. But it could be argued too that the disposition of the army to take only legal orders and stand by the law dissuaded any attempts by the incumbent to hold on to power. The story of Liberia's progress with multiparty democracy thus cannot be told without recognising the army's role in respecting and promoting democratic space.

## 5. Conclusion

Liberia is successfully consolidating its democratic gains. This is due not only to its legal framework but to the determination of the Liberian people not return to the dark days of conflict and military rule. The Constitution entrenches political parties through status recognition, grant of ancillary rights, and the stipulation of processes for elections. Yet gaps exist when it comes to party financing and access to state-owned facilities, gaps that serve to hamper competition on an equalised playing field. Providing public funding to political parties would serve three functions. First, it helps reduce dependence on funding by political leaders, thereby strengthening intra-party governance. Secondly, it contributes to the accountability of parties by placing them in the ambit of public-sanctioned audit by virtue of their receipt of public funds; notwithstanding limited compliance with reporting requirements, parties would be obliged to keep proper records and report on finances. Thirdly, the provision of adequate funding to political parties would discourage them from obtaining funds from prohibited sources.

Another key take-away is that participatory democracy in Liberia is undermined by the failure to demarcate electoral boundaries due to a lack of census data. As a result, representation in the national legislature is inconsistent with the population limits set by the Constitution. Furthermore, the abuse of incumbency – including by using state assets for campaign purposes and denying opposition parties access state-owned facilities – is anti-democratic and must be addressed. Dealing with these issues through a constitutional framework would be an appropriate safeguard against abuses that frustrate democratic ends. While subsidiary legislation may help address these issues, it remains subject to change and the whims of legislators, agency officials, and politicians. With the Constitution, there is a greater force of law, and changes in its provisions can occur only by referen-

dum. Furthermore, by enshrining protective provisions in the Constitution, the Supreme Court would be properly vested with the original jurisdiction to regulate political parties.

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