

NEC Policy Paper No. 3

Election Date

“Elections conducted during the dry season will be less costly and less difficult as compared to the rainy season” (NEC Lessons Learned Workshop)

1. Why does Liberia Conduct Elections in the Rainy Season?

According to the 1986 Constitution of Liberia, Article 93(a) “Voting for the President, Vice President, members of the Senate and members of the House of Representatives shall be conducted throughout the Republic *on the second Tuesday in October of each election year*” (emphasis added).

Since 2005, the dates of all presidential and House of Representatives elections have complied with this provision, having been held: on 11 October 2005, 11 October 2011 and 10 October 2017. The next presidential and House elections are due to be held on 10 October 2023. Senate Elections were held concurrently with the presidential and House elections in 2005 and again in 2011.¹ Elections for half of the Senate were due to be held on 14 October 2014 but were postponed until 20 December 2014 due to the Ebola epidemic. The next Senate elections are due on 13 October 2020 and again on 10 October 2023.



In Liberia and the coastal part of West Africa the rainy seasons run from April to July and again from September to October. Therefore, because Liberia’s electoral date is fixed by the Constitution, elections will always fall in the rainy season.

The NEC must adhere to deadlines that are set by laws and regulations and every polling place must receive ballot papers and other materials on time. Holding the elections at this time of the year creates additional challenges for the National Elections Commission (NEC). During this season, many roads are impassable - or are

only passable with considerable difficulty. This slows down the distribution of essential electoral material which in turn means that the NEC has no choice but to hire more vehicles. Where roads are impassable, the NEC needs to deliver material on foot or by air. Inevitably this increases costs.

The reasons why the framers of the Constitution decided to require that, in perpetuity, elections should be held on this date are not altogether clear. For its part, the NEC sees no benefits and many disadvantages in holding elections during the rainy season.

Looking back at the experience of organising the 2017 elections, the NEC’s Lessons Learned workshop concluded among other things that “Elections conducted during the dry season will be less costly and less difficult as compared to rainy season”.

¹ Half of the senators elected in 2005 were, exceptionally, elected for 6 years terms, meaning that these senatorial seats were up for re-election in 2011, whereas the other half were up for re-election in 2014. After the 2011 elections, all Senators are elected for nine-year terms.

In 2005 and 2011, UNMIL provided the NEC with considerable operational support,² but in 2017, the NEC's comprehensive logistics plan and timeline relied largely on its own resources.³ The NEC's plans for the voter registration exercise, the exhibition phase, and the two elections, included hiring: thousands of porters and 4x4 pick-ups (or jeeps),⁴ hundreds of trucks and motorbikes, approximately 100 canoes, a boat and several charter flights.

The difficulty of conducting elections in the rainy season does not only affect the distribution of polling materials - it also affects other NEC programmes such as roll out of voter and electoral rights education, which is already hampered by the poor communications networks which means more activities must be conducted face-to-face.

The NEC appreciates that the scheduling of elections affects not only its own work but impacts other election participants. For example, it can restrict the ability of the election contestants to campaign in some locations, which means that some voters may not be fully aware of candidates' political platforms. For voters, it can mean the discomfort of waiting in the rain to cast their votes - a factor which can depress the level of voters' participation (turnout). Also, it should be borne in mind that electoral technology that the NEC may wish to use in the future, is less likely to function as it should in humid conditions.

Ultimately however, the NEC was able to overcome the logistical challenges and complete activities mostly in line with the election calendar, and it is with some satisfaction that the NEC can claim that almost all polling places had received materials by the appointed opening time on election day. In its assessment of the 2017 elections, the EU EOM found that "the NEC made a significant effort in organising Liberia's 2017 elections despite various logistical and legal challenges, difficult terrain because of weather conditions during the first round and generally poor transport infrastructure."⁵



Moreover, the Constitution does not allow for the postponement of an election due to a critical emergency. As Liberia's tragic experience of Ebola shows, we cannot predict when a national crisis will happen. Not holding elections at their due time risks a constitutional crisis but holding them on time may not be feasible or advisable.

2. The Referendum of 23 August 2011

Proposals to amend the Constitution can only be initiated by the Legislature or through a citizens' petition. To be approved, firstly the two houses of the Legislature must approve the proposal(s) with a two-thirds majority. Then, at least one year after the parliamentary vote, the proposal(s) are put to voters in a referendum. To be adopted, by a two-thirds majority of

² In 2011, UNMIL provided air support to almost half of the counties for the distribution of the ballot papers as well as other sensitive and non-sensitive material.

³ Nevertheless, in 2017 UNMIL still provided generous assistance including over 100 hours of flight time

⁴ The NEC planned that the vehicles hired would be 4x4 vehicles, but due to the unavailability of this number of vehicles, some of the vehicles hired were SUVs, which were less effective.

⁵ European Union Election Observation Mission, Final Report, Liberia 2017

valid votes, the participating voters must also approve the change(s).⁶ In addition, Article 92 of the Constitution requires that “If more than one proposed amendment is to be voted upon in a referendum they shall be submitted in such manner that the people may vote for or against them separately.” In practice, this article significantly limits the number of proposals that can be put voters in any referendum. Asking ‘too many’ questions runs the risk of making the process too complicated to administer and for voters to properly understand.

On 23 August 2011, the NEC organised a referendum on four proposals⁷ to amend three articles of Liberia’s 1986 Constitution.⁸ The ballot paper contained four separate questions.⁹ Among these, voters were asked “Do you agree to change the election date from October to November?”; widely understood to mean moving the election to the second Tuesday in November. Tables 1.1 and 1.2 show the votes for each proposal and the calculation of the result.

Amendment	Description of Question	Yes		No		Invalid or blank	
		Votes	%	Votes	%	Votes	%
Article 52(c)	Reducing presidential residency requirement from 10 to 5 years.	292,318	47.48	246,473	40.03	76,912	12.49
Article 72(b)	Increasing mandatory retirement age of judges from 70 to 75.	221,163	35.92	322,223	52.33	72,317	11.75
Article 83(a)	Moving election date to the second Tuesday of November.	307,647	49.97	234,517	38.09	73,539	11.94
Article 83(b)	Using single-round first-past-the-post voting for all legislative and municipal elections.	364,901	59.27	174,469	28.34	76,333	12.40
Total ballots cast		615,703					
Voter turnout		34.22%					

Amendment	Description	Total Valid Votes		Valid Votes voting ‘Yes’	
		Votes	%	Votes	%
Article 52(c)	Reducing presidential residency requirement from 10 to 5 years.	538,791	100.00	292,318	54.25

⁶ Article 91 of the Constitution stipulates that the Constitution “may be amended whenever a proposal by either (1) two-thirds of the membership of both Houses of the Legislature or (2) a petition submitted to the Legislature, by not fewer than 10,000 citizens which receives the concurrence of two-thirds of the membership of both Houses of Legislature, is ratified by two-thirds of the registered voters, voting in a referendum conducted by the Elections Commission not sooner than one year after the action of the Legislature.”

⁷ In 2010, the NEC sent the Legislature ten proposals for constitutional amendment, all related to elections of which the Legislature selected three and added a fourth related to the retirement age for judges.

⁸ Two proposals related to one Article (Article 83).

⁹ In the 2011 referendum, the NEC used a single ballot which was perforated so that it could be separated into four parts with each of the four parts counted separately, in what was a time-consuming process.

Article 72(b)	Increasing mandatory retirement age of judges from 70 to 75.	543,386	100.00	221,163	40.70
Article 83(a)	Moving election date to the second Tuesday of November.	542,164	100.00	307,647	56.74
Article 83(b)	Using single-round first-past-the-post voting for all legislative and municipal elections.	539,370	100.00	364,901	67.65

In all 15 counties a majority of voters voted in favour of the proposal to change the date of the elections (56.74%) but the approval rate fell short of the two-thirds majority required. However, in four counties (Gbarpolu, Grand Kru, Grand Cape Mount and River Gee), over two-thirds of voters did vote in favour of the proposal. In general, the approval rating was lower in the more populated and more urban counties (see Table 2 below).

Table 2: Votes 'For' Proposition No. 3 Regarding Article 83(a)

County	Yes Votes	No Votes	Invalid	Total	Valid	%
Gbarpolu	7,836	2,608	953	11,397	10,444	75.03%
Grand Kru	6,402	2,901	797	10,100	9,303	68.82%
Grand Cape Mount	7,930	3,603	1,943	13,476	11,533	68.76%
River Gee	4,110	2,041	693	6,844	6,151	66.82%
Bomi	8,501	4,275	1,569	14,345	12,776	66.54%
Grand Bassa	17,197	8,850	3,352	29,399	26,047	66.02%
Grand Gedeh	6,443	3,809	878	11,130	10,252	62.85%
Lofa	28,709	18,427	7,527	54,663	47,136	60.91%
Margibi	16,730	11,455	4,619	32,804	28,185	59.36%
Maryland	7,236	5,102	1,623	13,961	12,338	58.65%
Bong	33,101	25,504	8,834	67,439	58,605	56.48%
Montserrado	113,812	99,815	29,440	243,067	213,627	53.28%
Rivercess	2,673	2,421	747	5,841	5,094	52.47%
Nimba	40,966	37,906	9,632	88,504	78,872	51.94%
Sinoe	6,001	5,800	932	12,733	11,801	50.85%
National Total	307,647	234,517	73,539	615,703	542,164	56.74%

3. Assessment of the Election Date and Recommendations

Despite the failure of the 2011 referendum to gain enough votes to trigger a constitutional referendum, many of the groups that observed the 2017 elections recommended the re-scheduling of Liberia's elections.

In its final report on the 2017 elections, the Elections Coordinating Committee (ECC) wrote "The date set for voting takes place at the peak of the rainy season and this poses serious

logistical challenges for the NEC in distributing election materials. It also poses financial constraints on political parties and independent candidates during the campaign period and [risks] Constitutional challenges in the event of a national crisis.”¹⁰ ECC comments that this provision is one of several requirements related to elections that should not be fixed in the Constitution, but rather established in statute to allow greater flexibility when needed.¹¹ More specifically, the ECC recommends that:

- ❖ Article 83 (a) of the Liberian Constitution “should be amended and the date for holding election is set in the NEL that responds to the weather condition and can be easily amended to respond to prevailing national economic constraint, calamity or crisis.”

ECC go on to state:

- ❖ “Provisions for the election date should establish a time range rather than a [fixed] date”.

The 2017 European Union (EU) Election Observation Mission (EOM) commented that holding the elections in the rainy season risked “jeopardizing the logistics of elections” but did not make a specific recommendation to change the date of the elections, although the 2011 EU Election Expert Mission (EU EEM) recommended that:

- ❖ “The Constitution should not indicate a specific Election Day but give a timeframe that allows for flexibility to react upon political developments and emergencies and that ensures the settlement of electoral disputes in a timely and impartial manner.”

The Electoral Institute for Sustainable Democracy in Africa (EISA) EOM recommended that the Liberian authorities:

- ❖ “Consider amending the legislation to provide for the conduct of elections during the dry season as opposed to the rainy season.”

In a similar vein, the National Democratic Institute (NDI) EOM recommended Liberia should:

- ❖ “Explore the possibility of legally moving election day to a time frame that is not during rainy season. This would greatly reduce logistical challenges and risks, as well as facilitate voter participation”

More generally, the ECOWAS EOM recommended that:

- ❖ “All pending constitutional matters related to elections should be resolved prior to the next elections”

Recommendations on the election date were not only made by election observer groups. In February 2013, at the start of the constitutional review process, the Constitution Review Committee (CRC) conducted a working retreat to identify the constitutional issues to be considered during the subsequent public consultations. The CRC’s Final Report noted that it was the view of the participants that:

¹⁰ Elections Coordinating Committee - ECC, Final Technical Observation Report of the 2017 Presidential and Legislative Elections, May 2018

¹¹ The ECC Final Report states: “The Constitution contains electoral provisions that are usually dealt with at the statute level such as voting procedures and party requirements. Additionally, Article 83 of the Constitution is heavily loaded. As already stated, it contains provisions for election date, electoral system, election results, confers judicial functions to the NEC in handling electoral petitions, and deals with political parties’ declaration of assets and liabilities (Article 83D)”. “These are issues that are subjected to changes to reflect political developments and therefore should be reflected in a legal instrument such as the NEL that can be amended with a normal parliamentary procedure rather than having to undergo a lengthy constitutional amendment process.”

- ❖ “the timing of elections take into consideration the climatic seasons of Liberia since indeed October is a month of heavy rains and the bad infrastructures of the country.”¹²

During subsequent stakeholder consultations, the CRC reported that political parties recommended that, as was proposed in the 2011 referendum, that:

- ❖ “The general and presidential elections shall be held on the second Tuesday in November”.

4. Setting the Date of Elections: International and Regional Situation

The International Covenant on Civil and Political Rights (ICCPR) provides that elections must be held ‘periodically’, and General Comment 25 on Article 25 of the ICCPR, provides that “Elections must be held at intervals which are not unduly long to ensure that the authority of government continues to be based on the will of electors.”¹³ Beyond this, international election standards do not address the issue of scheduling elections, and it is usually regarded as an issue within the margin of appreciation for states to decide.

The two tables below examine the experience of ECOWAS countries i) in organising recent elections in the rainy season and ii) the criteria for scheduling elections.

Country	Last Presidential Election Date (First Round)	Last Parliamentary Election Date	Election held in rainy season?
Benin	6 March 2016	26 April 2015	Yes (Parliamentary)
Burkina Faso	29 November 2015	29 November 2015	No
Cabo Verde	2 October 2016	26 March 2016	No
Cote D’Ivoire	25 October 2015	18 December 2016	Yes (Presidential)
(The) Gambia	1 December 2016	6 April 2017	No
Ghana	7 December 2016	7 December 2016	No
Guinea	11 October 2015	28 September 2013	Yes
Guinea Bissau	13 April 2014	13 April 2014	No
Liberia	10 October 2017	10 October 2017	Yes
Mali	29 July 2018	24 November 2013	Yes (Presidential)
Niger	21 February 2016	21 February 2016	No
Nigeria	28/29 March 2015	28/29 March	No
Senegal	26 February 2012	30 July 2017	Yes (Parliamentary)
Sierra Leone	7 March 2018	7 March 2018	No
Togo	25 April 2015	25 July 2013	Yes

Not all ECOWAS countries hold parliamentary and presidential elections simultaneously. During their last election cycles, the 14 other ECOWAS members organised 22 national elections. Of these, eight were held in the country’s rainy season, including elections in two of Liberia’s neighbours; Guinea and Cote d’Ivoire.

¹² Report of the Constitution Review Committee (CRC) covering the Period August 30, 2012 to March 1, 2015

¹³ Paragraph 9 of General Comment 25 on the ICCPR.

Country	Presidential Election Date in Constitution?	Date	Date set by
Benin	Yes - date range	30 to 40 days before expiry of mandate	Unclear
Burkina Faso	Yes - date range	21 to 40 days before expiry of mandate	President
Cabo Verde	Yes - date range	25 to 40 days before expiry of mandate	Unclear
Cote D'Ivoire	Yes - fixed date	Last Saturday of the month of October	Constitution
(The) Gambia	Yes - date range	Within 3 months before expiry of term	Election Commission
Ghana	Yes - date range	Within one month to four months from the expiry of mandate	Electoral Commission
Guinea	Yes - date range	60 to 90 days before expiry of mandate	Electoral Commission
Guinea Bissau	Unknown	Unknown	President
Liberia	Yes - fixed date	Second Tuesday in October	Constitution
Mali	Yes - date range	21 to 40 days before expiry of mandate	Council of Ministers
Niger	Yes - date range	30 to 40 days before expiry of mandate	Electoral Commission
Nigeria	Yes - Date Range	30 to 60 days before expiry of mandate	Electoral Commission
Senegal	Yes - date range	30 to 45 days before expiry of mandate	Constitutional Council
Sierra Leone	Yes - date range	Within one month to four months from the expiry of mandate	President
Togo	Yes - date range	60-75 days before expiry of mandate	Council of Ministers

Table 4 indicates that the Constitutions of all ECOWAS states contain a provision on when the presidential election should be held but only two - Liberia and Cote d'Ivoire - specify a fixed date. The other 13 countries stipulate a date range calculated from the expiry of the presidential mandate. Table 4 also shows that a variety of institutions are mandated to set the specific date: most commonly, the Electoral Commission (in the Gambia, Ghana, Guinea, Niger and Nigeria) but also the President, the Council of Ministers and in Senegal the Constitutional Council.

In Liberia the incumbent President's mandate expires with the inauguration of the President elect. According to the Constitution, the President "shall hold office for a term of six years commencing at noon on the third working Monday in January of the year immediately following the elections".¹⁴ Scheduling the elections on the second Tuesday of October and the start of the President's term in office on the third Monday of January gives approximately 95 - 100 days between the holding of the first round of the elections and the assumption of office by the elected president.

¹⁴ Constitution of Liberia, Article 50

Article 83(c) of the Liberian Constitution stipulates that the announcement of results can occur up to 15 days after election day and grants parties seven days thereafter to file a complaint. After receipt of the complaint, the Commission has up to 30 days to investigate and rule on the merits of the complaint. The party then has seven days to appeal the decision to the Supreme Court, which will then have an additional seven days to decide the case. The timeframe for hearing complaints and appeals could - in the event that a two round election is required to determine the election winner and that the results of both rounds are challenged with the NEC and the Supreme Court - run beyond the date for swearing the President into office - see Table 5 below (based on the 2017 calendar).

Action	Timeframe	Max Cumulative Time	From Inauguration Date
Announcement of Results	Up to 15 days after election day	First Election Day +15	- 82 days
Deadline for Filing Complaints	7 days after the announcement of results	First Election Day +22	- 75 Days
Investigation and Ruling by NEC	Within 30 days of the complaint being filed	First Election Day + 52	- 45 Days
Appeal to Supreme Court	Within 7 days after decision by NEC	First Election Day + 59	- 38 Days
Decision by Supreme Court	Within 7 days	First Election Day +65	- 31 Days
Second Round Election	Second Tuesday after expiry of complaint/appeal period (12 days)	First Election Day + 77	- 19 Days
Announcement of Results	Up to 15 days after election day	First Election Day + 92	- 4 Days

If a complaint for the second round and an appeal is also filed with the Supreme Court, and the same timeframe is used, the Court’s decision may only be available by early March. The EU EOM Recommended, as a priority, that

- ❖ “The legislature might consider undertaking a review of article 83 in light of the SC ruling of 6 November 2017 and, as may be necessary, remove uncertainty on the span of appeals timelines to safeguard future inaugurations against potential conflicts with complaint timelines.”

5. Charting a Way Forward for Liberia

The EU EOM wrote “Constitutional reform, though necessary, could prove challenging in circumstances where the provision on amendments involve a high threshold for change. The Constitution has only been amended once since 1986. Concerted efforts, including inter-institutional and political consensus building, could help overcome these challenging hurdles. The review and amendment of restrictive constitutional provisions, such as those on election dates and citizenship, could further strengthen Liberia’s democratic processes.”¹⁵ The EU EOM

¹⁵ The only time that the Constitution was amended since its adoption was through proposition 4 of the 2011 referendum.

goes on to state that “While some proposals, including the issue of citizenship, remain controversial, the prospect of change to operationally restrictive clauses, such as the fixing of the election dates within the rainy season, appears to have gained traction among various stakeholders.”¹⁶

Although it is not in a position to initiate any constitutional change, the NEC is of the view that modifying Article 83(a) would be beneficial to all electoral stakeholders and is well justified on cost-saving grounds. However, given that the proposal is aimed at facilitating the smooth organisation of elections and reducing costs, the change does not warrant holding a referendum unless it is conducted simultaneously with another scheduled election. Thus, if a change to the election date is supported by the Legislature, a referendum could feasibly be held at reasonable cost if it is organised together with the October 2020 Senate elections. However, given the requirement that the legislature must give its approval to the change at least 12 months before the referendum is held, its approval would need to be given no later than early October 2019.

The NEC believes that if a change to Article 83(a) is made, it would be preferable to avoid substituting one fixed date for another. Rather, the Constitution could set out a time period in which the election date must fall. This is the practice in many ECOWAS member states, including Ghana and Sierra Leone. At the same time, the Legislature may also wish to consider:

- ❖ Which body should be given the task of announcing the actual election date;
- ❖ When the date should be announced e.g. no later than 6 months or a year before the appointed date;
- ❖ Whether amending Article 83(c) is necessary to ensure completion of the electoral complaints and appeals process in a manner that is coherent with Articles 83(a) and 50 of the Constitution, and
- ❖ Procedures to postpone an election in the event of a national emergency.

If at some point Liberia wishes to have a more comprehensive constitutional change, the Legislature might also wish to review Article 92. As noted above, the current requirement for each proposal to amend the Constitution to be voted on separately *de facto* limits the number of proposals that can be voted on if the referendum process is not to become unfeasibly complicated to organise, and too complex for voters to comprehend.

If the legislature does decide to advance constitutional revisions, it is of the utmost importance that voters are made aware of the reasons that the changes are being proposed. Given the requirement that the NEC acts independently and impartially, the Commission cannot advocate for or against the changes and to avoid a conflict of interest, it can only provide information of a factual nature to voters.

References

Relevant International and Regional Legal Instruments and other Standards

The International Covenant on Civil and Political Rights (ICCPR).

General Comment 25 on Article 25 of the International Convention on Civil and Political Rights (ICCPR)

Election Observation Mission Reports and Statements

African Union Election Observation Mission (AUEOM) 10 October 2017 Presidential and House of Representatives Elections, Preliminary Statement, Monrovia 11 October 2017.

¹⁶ *Op Cit.*

The Carter Center Preliminary Statement, International Election Observation Mission to Liberia's presidential Runoff, 28 December 2017.

ECOWAS, Liberia 2017, Presidential and Representative Elections, Preliminary Declaration,

Elections Coordinating Committee - ECC, Final Technical Observation Report of the 2017 Presidential and Legislative Elections, May 2018

Electoral Institute for Sustainable Democracy in Africa (EISA), Election Observation Mission to the 10 October 2017 Presidential and Representatives Elections in Liberia, Preliminary Statement, Monrovia, 12 October 2017.

European Union Election Observation Mission, Final Report, Liberia 2017

Liberia Elections Observations Network (LEON), October 13, 2017

National Democratic Institute, Final Report on the Liberia 2017 Presidential and Legislative Elections

Other

Report of the Constitution Review Committee (CRC) covering the Period August 30, 2012 to March 1, 2015

Governance Commission, Annual Governance Report, The Liberian Election System, February 2017.

NEC Strategic Plan (2018 - 2024)