

## **THE CARTER CENTER INTERNATIONAL ELECTION OBSERVATION IN LIBERIA PRE-ELECTION STATEMENT**

July 18, 2016

### **Executive Summary**

In April and July 2016, the Carter Center's Democracy Program deployed pre-election assessment delegations to Liberia to assess the current political environment and status of technical preparations in advance of presidential and legislative elections anticipated in October 2017. The delegations met with political parties, presidential aspirants, the National Elections Commission, Supreme Court officials, the Liberian National Police, the Press Union of Liberia, civil society leaders, and members of the international community to understand current dynamics and key challenges.

The 2017 national elections represent a critical moment in Liberia's recovery from war and transition to a peaceful democracy, and the first post-war transition from one elected president to another through a democratic process. These will be the third presidential elections since the end of armed conflict and a key test for Liberians to consolidate democratic governance through peaceful competition for political power at both the presidential and legislative levels. There is a strong desire among all Liberians for the elections to proceed smoothly and peacefully. However, there are serious concerns about the post-election environment if the elections fail to meet international standards.

"These elections present an historic opportunity for Liberia," said Jordan Ryan, the Carter Center's vice president for peace programs and a former UNMIL deputy special representative, "and I call on all Liberians to commit to peaceful participation in the democratic process, consistent with the rule of law."

The Carter Center will make additional pre-election assessment visits and issue reports in the coming months. These missions are separate from ongoing Carter Center programming in Liberia, which focuses on supporting access to justice, access to information, and mental health.

Should The Carter Center be invited to observe the 2017 elections, and depending on funding, The Carter Center would consider supplementing these short assessment visits with the deployment of a robust election observation mission, starting with the deployment of a team of long-term observers in January in advance of the voter-registration period. International observation can play a critically important role in helping to ensure the success of difficult elections and is most effective when long-term observers help identify potential problems early enough that they can be addressed well in advance of polling day.

## **Electoral Preparations**

### *Election Management*

A critical factor in enhancing the transparency of an electoral process and facilitating the active participation of citizens in the democratic process is an independent and impartial election management body. A transparent, accountable, and professional body is regarded as an effective means of ensuring that domestic and international obligations related to the democratic process are met.<sup>1</sup> The election management body should provide accountable, efficient, and effective public administration of elections, and should ensure that the electoral process is in compliance with Liberia's national laws as well as its regional and international obligations for democratic elections and human rights.<sup>2</sup>

The current National Elections Commission (NEC) was established in 2004 and is directed by a board of seven commissioners with regional and functional areas of responsibility. The board of commissioners is supported by an executive director and an administrative division. The commission has offices in 19 magisterial areas covering the 15 counties.

The main Liberian stakeholders who met with the Center's delegation expressed reasonable confidence in both the neutrality and capacity of the NEC, though some voiced concerns about the NEC's ability to overcome anticipated challenges and distrust in the government. The NEC should ensure that its actions continue to be consistent with a professional, high-capacity, and impartial organization. The 2017 elections offer an important opportunity to advance the NEC's professionalism and neutrality and to position it to continue to be a foundational institution for a democratic Liberia.

At the county level, the NEC will need to take steps well in advance of the elections to reinforce staffing structures, assess training needs, and determine the status of equipment needed to administer the elections, including computers, printers, generators, and internet access. Early consideration should also be given to logistics, especially the transportation needs of county NEC offices and security personnel.

### *IPCC*

An Inter-Party Consultative Committee (IPCC) was established in Liberia to serve as a forum for communication between the NEC and political parties. The IPCC is currently meeting in Monrovia. The IPCC appears to be well-attended and is positioned to be an effective two-way channel for communication between the NEC and political parties. Senior members of political parties should attend the IPCC meetings, and corresponding outreach to the political parties should be held at the county level.

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<sup>1</sup> *United Nations, International Covenant on Civil and Political Rights General Comment 25 para. 20*: "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant."

<sup>2</sup> Venice Commission, Code of Good Practice in Electoral Matters, sec. II.3.1.c.

### *Funding for Elections*

The government of Liberia is facing a budget crisis, particularly following the costs of addressing the Ebola crisis and the decline in global raw material prices. The NEC, Liberia National Police, and others have submitted their budgets related to elections for consideration by the legislature and Ministry of Finance, and timely decisions regarding the best use of state funding must be made. Timely and sufficient funding for the elections needs to be available to the NEC – and where appropriate, to the magistrates – early in the process to enable it to undertake necessary procurements and contracting in accordance with best practices. Although the NEC’s budget for elections is currently under consideration, the law requires a bi-annual allocation of funds to ensure that the NEC is able to move ahead with key components, including preparations for the registration of voters and associated civic and voter-education campaigns. Ordering election supplies too close to an election can require costly air transport rather than less expensive ocean freight, for example. Questions regarding the extent of the mandate of the United Nations Mission in Liberia (UNMIL) and its ability to provide any necessary logistical support during elections will also require early answers (and funding) to facilitate planning for the elections.

### *Voter Registration*

Voter registration is an important means to ensure the rights of universal and equal suffrage and should be made available to the broadest pool of eligible citizens possible without obstacles.<sup>3</sup> The rights of universal and equal suffrage are fundamental international obligations and a critical part of democratic elections.

A new voter list will be created for the 2017 elections, and a voter-registration period is anticipated in February and March of 2017.

When planning the calendar and logistics for the voter-registration period, consideration should be given to ensuring that the voter registration centers are operational during the same time period for the same length of time so that citizens across the country have equal access to the process and an equal opportunity to register. In addition, adequate time should be given for the public inspection of the preliminary voter list, and adequate resources should be dedicated to raising public awareness of the registration process, including the opportunity to verify the quality and accuracy of the list and to seek any necessary changes.

Several amendments to the electoral law passed in 2014 will affect the voter-registration process, including that voters must now register at a center in the place where the voter ordinarily resides, and must vote at the place established for that center.<sup>4</sup>

The NEC has begun information sessions on the content of the 2014 amended elections act that is currently being codified by the Ministry of Justice. These

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<sup>3</sup> United Nations International Covenant on Civil and Political Rights, Article 25(b); African Union Declaration on the Principles Governing Democratic Elections in Africa, Article 1; United Nations Human Rights Council, General Comment 25, para. 11.

<sup>4</sup> An Act to Amend Certain Provisions of the 1986 Elections Law (September, 2014). Chapter 3.

information sessions are welcome and should continue, and should provide clear guidance on the definition of “ordinarily resides,” any documentation requirements, and the level of address detail that should be recorded in each entry on the voter roll. Extensive public education should be conducted in the months before voter registration to ensure that all are aware of this requirement.

*Biometric Voter Registration.* The Carter Center understands that following extensive study and discussion among Liberians, a decision has been made not to introduce biometric voter registration (BVR) for the 2017 elections. The Carter Center believes this is a well-reasoned decision in light of the high cost (estimates as high as USD \$50 million) at a time when Liberia faces a budgetary crisis, and funding for other critical components of the elections has not yet been secured.

In past elections in Liberia, confidence in the voter register has generally been high. In 2005 and 2011, international observers reported sound procedures for the registration of voters in Liberia, with adequate protections in place broadly consistent with international standards. The 2017 elections provide an opportunity to strengthen elements of Liberia’s voter-registration process, for example by updating the voter-registration card to enhance its durability and security.

Implementation of BVR requires careful planning, preparation, and implementation over a period of time, and failure to adequately plan can have negative consequences for electoral integrity and credibility. Should Liberia want to consider BVR for future elections, comprehensive stakeholder consultations should be held with political parties, civil society organizations, the media, and others to share information and discuss the benefits and consequences. In addition, it should be understood that the use of BVR equipment is only one element of a voter-registration process and does not alone ensure a fully accurate and inclusive voter roll. Other components are equally important, such as legislation, procedures, implementation of eligibility and identification requirements, and the recruitment and training of staff. In addition, consideration needs to be given to international standards for privacy and security during the collection, storage, and use of biometric data.

If Liberians wish to consider BVR for the future, the 2017 elections could be an opportunity to test the extent to which BVR would be a positive contribution to the administration of elections through a carefully planned pilot in several locations.

### **Voter and Civic Education**

Voter education is an essential part of the electoral cycle and is recognized as an obligation to ensure that an informed electorate is able to effectively exercise their right to vote without obstacles, thereby ensuring universal and equal suffrage.<sup>5</sup>

Extensive voter-education campaigns should be conducted well in advance of the voter-registration period to ensure that all are aware of the importance of the registration period, when and where to register, details of the exhibition period, and other aspects of the law that impact registration and the elections.

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<sup>5</sup> U.N. ICCPR, Article 25(b); United Nations Human Rights Council, General Comment 25, “the Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” para. 11.

Likewise, a thorough voter-education campaign should start well in advance of elections to explain the election process to voters and to encourage peaceful elections and political participation. In addition, civic education should be tailored to reach the widest possible audience in ways that citizens can readily understand.

### **Legal Framework for Elections**

A sound legal framework is essential to the administration of democratic elections and to ensuring that a country upholds its international obligations. The legal framework includes constitutional provisions, domestic laws, and regulations regarding the electoral process. Liberia's international commitments obligate it to take measures to promote core principles of the rule of law, including that laws must be consistent with international human rights obligations.<sup>6</sup>

In Liberia, the legal framework for the conduct of the 2017 elections includes the constitution, the elections law as amended by the Electoral Reform Laws of 2004 and the 2014 Act to Amend Certain Provisions of the 1986 Elections Law, the law on political parties, and regulations and decisions of the NEC.

New amendments to the electoral law were passed in 2014, including a call for political parties to include no less than 30 percent of any gender among their executives and staff, and the introduction of a threshold that requires that parties must earn at least two percent of the vote in order to contest the next elections.<sup>7</sup>

Although amendments to the elections law were passed by the legislature and signed by the president in September 2014, the Ministry of Justice has not yet codified the legislation to incorporate the changes and produce a new consolidated election law. The Carter Center understands that the Ministry of Justice is now prioritizing codification of the election law amendments and that it should be available soon. The NEC has begun to conduct information sessions on the new law. The Carter Center welcomes these steps and urges that information sessions continue both at the national and county levels.

It is possible that additional changes to the legal framework may be considered in Liberia's legislature in advance of elections, including changes that could affect the way election-related disputes are resolved and that could create reserved seats in the legislature for women, youth, and persons with disabilities. Consideration of any additional changes to the legal framework for elections should be expedited to ensure adequate time for debate, codification, dissemination, public education, and implementation in advance of elections. The Economic Community of West African States (ECOWAS) Protocol on Good Governance mandates that changes to the legal framework for elections should not be made within six months of an election.<sup>8</sup>

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<sup>6</sup> United Nations, International Covenant on Civil and Political Rights, Article 2; Universal Declaration of Human Rights, Article 21(3); International Covenant on Civil and Political Rights, Article 25 (b).

<sup>7</sup> An Act to Amend Certain Provisions of the 1986 Elections Law (September 2014). Chapter 4, Chapter 5A.

<sup>8</sup> ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping, and Security.

## **Electoral Dispute Resolution**

The opportunity to seek timely and effective resolution of election-related disputes is a fundamental aspect of a democratic electoral process.<sup>9</sup> Liberia's constitution and the elections law establish a process for raising electoral disputes and provide the NEC with original jurisdiction over the elections law, regulations, and codes of conduct; they also grant the NEC the power to fine, suspend registration of political parties, and order corrective measures. Appeal on election-related matters is directly to the Supreme Court, which must issue a ruling within seven days.<sup>10</sup>

Following the 2014 senatorial elections, independent observers and others have raised concerns about the proper sequencing of the process between the NEC and Supreme Court in the resolution of election-related disputes.

In advance of elections, additional training should be provided for both the NEC and Supreme Court regarding the resolution of election-related disputes. At the county level, NEC magistrates should be provided with additional training in this area to ensure that they are able to fulfill their responsibilities. Additional training should also be considered for the national police regarding their role in resolving electoral offenses.

At present, the legal department at NEC is significantly understaffed. The recruitment and training of additional staff will be required so that the legal department can fulfill its key responsibilities.

Political party and independent candidate agents should also be thoroughly trained on the electoral process, electoral offenses, and procedures for filing complaints. Complaints must be submitted in writing no later than seven days after the offense or violation was witnessed. Witnesses must sign the complaint and submit any accompanying evidence. Complaints should be submitted to the NEC's national office, the office of the magistrate in the county where an alleged offense occurred, or to the presiding officer of the polling place in question.<sup>11</sup>

## **Political Parties and Candidates**

The right of individuals to participate in public affairs, including through the establishment of, and free association with, political parties and participation in campaign activities, is an international obligation and a fundamental electoral right. An open and transparent campaign environment with equitable treatment of candidates and parties is integral to protecting the integrity of democratic elections. In

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<sup>9</sup> ICCPR, Article 2; ACHPR, Article 7.

<sup>10</sup> Additional legislation may be considered that could impact the dispute-resolution system.

<sup>11</sup> An Act to Amend Certain Provisions of the 1986 Elections Law (September 2014). Chapter 5.

addition, the right to be elected requires that states ensure that citizens have the opportunity to stand for elected office, free from unreasonable restrictions.<sup>12</sup>

The NEC will conduct a formal candidate nomination process in advance of the elections in 2017. Currently, political parties are planning party primaries in order to include their membership in the decision-making process of selecting candidates for presidential and legislative elections. For some political parties, presidential candidates are already known; for others, parties anticipate competitive primaries.

Although the formal campaign period for elections will not take place until next year, and regulations guiding the campaign period are not currently in effect, political party members, prospective candidates, and citizens should be able to exercise their rights of freedom of association and the right to stand for elected office. Consistent with best practices, persons should be allowed to campaign to be their party's candidate to ensure that members of political parties are able to make informed choices during party primaries.

The 2017 elections offer Liberia an opportunity to move beyond a history of political parties centered around individuals to a democracy with political parties based on issues. Competitive political party primaries that incorporate the voice of political party members in the candidate selection and nomination process are considered positive signs of a maturing democracy.

*Campaign finance.* The state is obligated to take measures to prevent corruption, particularly in the context of campaign financing.<sup>13</sup> The Carter Center's report on the 2011 national elections in Liberia noted a few important shortcomings, including the lack of any requirement that parties submit an interim financial report before election day, which would allow voters to evaluate contributions and spending by candidates and political parties before casting their votes. In addition, some political parties lack the capacity to prepare and submit a campaign finance report.<sup>14</sup> Addressing both of these measures in advance of the 2017 campaign period would help ensure greater transparency of political party financing.

The amendments to Liberia's 1986 elections law passed in 2014 give the NEC authority to make regulations in the area of campaign finance that specify the form, content, and timing of reports. To ensure that campaign-finance regulations are meaningful, the Carter Center encourages the NEC to establish further regulations that require reporting in advance of elections.

*Party and candidate agents.* Political party and candidate agents play an important role in ensuring the transparency of elections, building confidence in the process and providing peaceful mechanisms through which complaints can be registered. Although political parties and candidates have successfully deployed large numbers

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<sup>12</sup> U.N., ICCPR, Article 25(b); U.N., Convention on the Political Rights of Women, Article 2; U.N., Convention on the Rights of Persons with Disabilities, Art. 29 (a)(ii). Unreasonable restrictions include race, sex, religion, ethnic origin, language, and physical disability.

<sup>13</sup> UNCAC, Article 7.

<sup>14</sup> The Carter Center. "National Elections in Liberia. Fall 2011. Final Report."

of agents to serve as their eyes and ears at the polls, Carter Center observers in Liberia's 2005 and 2011 elections noted that agents from the major parties were not present at many polling stations, and, in addition, many agents appeared not to fully understand the electoral process or their rights, especially regarding the procedure for filing formal complaints.

Although the NEC provides some training to agents, political parties and candidates are responsible for developing plans for the recruitment, training, and support of agents across the country. Agents should understand the electoral laws, the rules and regulations governing the voting and counting processes, and the rights and responsibilities of agents. It is critical that agents understand their role within the polling station and what electoral offenses are so that they can report any irregularities through the official complaint process. Agents are most effective when a standardized checklist is used as a reporting mechanism to enable them to efficiently collect information about the polling and counting processes across the country. Agents and political party leadership should be well-trained on the rights and procedures for filing electoral complaints. The international community should consider support for the training of political party agents.

### **Women's Participation in Politics**

Liberia is a signatory to a number of international treaties that mandate Liberia take specific positive action to promote the equal participation of women in political life.<sup>15</sup> To meet these obligations, Liberia should take steps to ensure that women participate equally in the electoral process as candidates, members of political parties, party agents, observers, poll workers, voter-education officers, and, ultimately, voters.

The underrepresentation of women in Liberia's government is among the greatest deficiencies in the country's democracy. A government should be representative of its people. Genuine democracy requires that all citizens be able to participate in political processes and meaningfully influence decision-making that affects their communities, free from obstruction or fear.

In many regards, the women of Liberia have long played a leading role in moving Liberia forward, including as critically important actors in ending the war and leading the reconstruction. Liberia enjoys the distinction of having Africa's first elected female president. Nonetheless, women remain underrepresented in political life and face significant challenges in post-war Liberia. Among the steps to build an inclusive, democratic society, it is essential that Liberia put an end to gender-based violence.

Following the 2005 elections, 14 percent of Liberia's legislative seats were held by women. That percentage dropped to 11 percent following the 2011 elections, and to

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<sup>15</sup> The United Nations. (1953). Convention on the Political Rights of Women. *Treaty Series*, 2, 1–28. African Union. (2003). *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. Maputo: African Union. "States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes; c) women are equal partners with men at all levels of development and implementation of State policies and development programmes."



10 percent following the 2014 legislative elections.<sup>16</sup> Some stakeholders fear that women could lose further ground in the 2017 elections. It is incumbent on all Liberians to take action to reverse this threat and ensure that Liberian women enjoy political participation equal to men.

The amendments to Liberia's 1986 elections law passed in 2014 calls upon political parties and coalitions to "endeavor to ensure" that its governing body and list of candidates has no less than 30 percent of its members from each gender. Some political parties appear to have only limited awareness of this change.

The Carter Center calls upon all political parties to uphold the intent of Liberia's amended elections law that supports the rights of women to participate equally in political affairs in accordance with Liberia's international commitments. Furthermore, given that the existing laws are not proving effective, the Center urges Liberian leaders to consider legislation to ensure the equal political participation of women.

Although numerous attempts have been made within Liberia's legislature to pass a quota to support women's participation in politics, none has been successful, and to date Liberia has failed to meet international obligations in regard to women's political participation. Among the reasons for the failure of such legislation has been the unwillingness of male legislators to support legislation that they interpret as requiring them to give up their seat to a woman. Liberian political elites need to take swift action to ensure Liberia's fulfillment of its international obligations.

## **Security**

Underlying tensions are already evident in advance of the October 2017 elections, and there are widespread concerns about security. Although the Liberia National Police (LNP) are confident they will be able to manage election security, there is concern about their lack of capacity, particularly in rural areas.

The capacity of Liberia's security sector has been enhanced in recent years, and the full responsibility for security now lies with Liberian officials, following an official handover from UNMIL. However, the military — and particularly the police — have drawn criticism for their lack of professionalism and independence in certain instances, including their failure to exercise effective restraint. This was tragically displayed on the eve of the runoff in 2011, when an LNP officer fired into a crowd of unarmed civilians at the headquarters of the Congress for Democratic Change political party, leading to at least one and possibly several deaths. In that instance, the swift intervention of UNMIL troops ended the violence and prevented the development of a security crisis.

Additional robust training should be provided for police on their role during elections, stepped down across the country. The police must also be provided with sufficient equipment — including computers, communication equipment, and transportation — in order to effectively perform their responsibilities. Sufficient funds should be made available to security forces around election day to ensure that they can adequately meet their obligation to provide security at every polling place.

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<sup>16</sup> Inter Parliamentary Union (IPU), Women in National Parliaments, World Classification, last updated June 1, 2016.

## **UNMIL Security Handover**

UNMIL's official handover of security to the Liberian National Police on June 30, 2016, represents a historic moment in Liberia's long-term recovery and democratization process.

The 2017 elections will be conducted without the scope of security support provided by UNMIL in the past. In addition, the amount of other UNMIL support (helicopters, U.N. vehicles, etc.) is currently under discussion. This transition makes it harder for Liberian stakeholders to adequately plan and budget for needs around the election, including vehicle and equipment needs and adequate plans for the movement and security of sensitive materials. The electoral process would benefit from expedited planning and coordination.

During the 2005 and 2011 elections, UNMIL played a crucial role in delivering materials to difficult-to-access locations and ensuring security throughout the country.

## **RECOMMENDATIONS**

### **To the People of Liberia:**

- Commit to a respectful, transparent, and peaceful electoral process. Liberia's leaders and citizens should commit themselves to peaceful political participation to ensure violence-free elections, consistent with the law, and to continue the strengthening of democracy and development in Liberia.

### **To the Government of Liberia:**

- The Ministry of Justice should prioritize codification of the election law amendments and distribution of the new consolidated law.
- Make available adequate funding for the elections to the NEC – and where needed, to the magistrates – early in the process to enable it to undertake necessary procurements and contracting in accordance with prevailing best practices.
- Refrain from actions that could be seen as compromising the neutrality of the NEC.
- Consider the passage of legislation that would ensure the equal political participation of women, whose underrepresentation in government is a significant deficiency in the country's democracy.

### **To the NEC:**

- Continue to take steps to ensure a reputation as a professional, high-capacity, and impartial organization.
- At the county level, take steps well in advance of the elections to reinforce staffing structures, assess training needs, and assess the status of equipment

that will be necessary for the administration of elections, including computers, printers, generators, and internet access.

- Consider early the transportation needs of county NEC offices and security personnel.
- Take steps to strengthen campaign-finance regulations and their administration. Consider strengthening NEC regulations to require that parties submit an interim report before election day to allow voters to evaluate contributions and spending by candidates and political parties before casting their votes. Provide training to political parties to ensure they have the capacity to account for funds.
- Continue the information sessions on the 2014 amended election act at both at the national and county levels.
- Consider holding specific information sessions for political parties, civil society organizations, and media on electoral dispute resolution and processes.
- Prepare extensive civic and voter education campaigns in advance of voter registration, beginning quickly upon allocation of funds by the government.

**To the IPCC:**

- Continue to meet, with dedicated attendance by senior members of political parties. Hold corresponding political party consultative meetings at the county level.

**To the Political Parties and Prospective Independent Candidates:**

- Political leaders: commit to participating responsibly and peacefully in the elections and make an early commitment to a nonviolent election.
- Political parties: Uphold Liberia's international commitments and comply with the intent of the law as amended to ensure that women are represented among political party leaders and candidates.
- Political parties and independent candidates: Adhere to campaign-finance regulations, including reporting requirements and regulations that prohibit the use of public resources in campaigning.

**To the Media:**

- Commit to supporting a peaceful election.
- Press Union of Liberia: Provide additional training and support to help regulate the media during elections.

**To UNMIL:**

- Clarify as soon as possible the nature and degree of UNMIL support to the electoral process.

**To the International Community:**

- Provide coordinated early funding commitments to support the election, including budgetary support to the NEC, support for the training of political party agents, and programming to advance women's participation in politics.