

# PRELIMINARY STATEMENT OF NDI'S INTERNATIONAL OBSERVATION MISSION TO LIBERIA'S 2017 PRESIDENTIAL RUN-OFF ELECTION

Monrovia, Liberia December 28, 2017

#### INTRODUCTION

This preliminary statement is offered by the National Democratic Institute's (NDI) international observer delegation for Liberia's December 26, 2017 presidential run-off election. The mission's purpose is to support Liberia's efforts to conduct peaceful, credible polls; impartially and accurately assess the electoral process to date; and offer recommendations to improve future elections. NDI has been observing Liberia's electoral process since February 2017, and fielded two pre-election assessment missions, one in February and one in September 2017. The Institute also observed the presidential and legislative elections of October 2017. This statement builds on previous statements issued earlier this year, as well as the findings and contributions of the mission's four in-country analysts and six long-term observers deployed across the country since June 2017.

Liberia's 2017 elections provide an opportunity for the first peaceful transfer of power from one democratically elected president to another since 1944. On October 10, 2017, Liberians went to the polls to elect a president and 73 members of the House of Representatives. As none of the presidential candidates obtained an absolute majority in the presidential poll on October 10 as required by the election law, a runoff was planned for November 7, 2017 between the two leading candidates. However, a legal challenge to the conduct of the first-round election resulted in the postponement of the runoff election until December 26, 2017.

For the December 26 poll, NDI's 36-person delegation included observers from 18 countries across Africa, Europe and North America and was co-led by: former President Goodluck Jonathan of the Federal Republic of Nigeria; former President Atifete Jahjaga of Kosovo; former Foreign Minister Hanna Tetteh of Ghana; and Dr. Christopher Fomunyoh, Regional Director, NDI. Delegates have been in Liberia from December 22, during which time they met with political party leaders, election officials, security officials, civil society representatives, the media, other international election observers and the diplomatic community. The delegation also met with both presidential candidates -- current Vice-President Joseph Boakai of the Unity Party (UP) and Ambassador George Weah of the Coalition for Democratic Change (CDC).

The delegation is grateful to all those with whom it met and who shared their views generously. The delegation also expresses its appreciation to the United States Agency for International Development (USAID) for funding this delegation and supporting NDI's democracy assistance programs in Liberia. NDI conducted its activities in accordance with

Liberian law and the *Declaration of Principles for International Election Observation*<sup>1</sup> and collaborated with the other international observer missions that endorsed the Declaration.

This statement is preliminary in nature. The delegation recognizes that the official tabulation process and announcement of results are not complete at this time. The delegation therefore does not presently seek to render final conclusions on the December 26 election. The people of Liberia will ultimately determine the credibility and legitimacy of their elections. NDI will continue to monitor the electoral process through its completion and will issue additional reports as appropriate.

# DELEGATION FINDINGS AND OBSERVATIONS CONCERNING ELECTION DAY

The December 26 voting and counting processes were peaceful, well-conducted and showed marked improvements as compared to the October 10 polls. Unlike during previous polls in the country, there was no election-related violence or major incident that resulted in the loss of life.

Liberians engaged actively in the process as voters, citizen election observers, party poll watchers, election administrators and security officers. The two competing parties fielded party agents in all polling sites visited by members of the delegation. Civil society organizations in turn fielded more than 2,000 citizen observers who deployed in all districts and counties across the country. On election day, security officers were deployed at polling sites to ensure orderly conduct around voting areas and to escort poll workers as they transported election materials from holding centers to polling places, and again after closing and counting as polling officials brought materials to Magisterial Offices for intake and tabulation.

Women and youth were active in the electoral process. Women took part as voters, election observers, security officials and party poll watchers. Young people also participated as voters, election observers, security officials and party poll watchers.

Polling places observed by the NDI delegation largely opened on time with all five polling officials and essential and sensitive materials present. Nearly half of polling officials observed were women. NDI's findings aligned with those of the citizen observer group Elections Coordinating Committee (ECC), which reported that by 8:30 am, 96 percent of polling places where their observers were stationed had opened; 99 percent of polling places with ECC observers had all essential materials.<sup>2</sup> The Final Registration Roll (FRR) was properly posted in nearly all polling places observed.

Queue controllers were deployed at all polling sites visited by NDI observers and signs were posted with serial numbers to assist voters to their appropriate polling places. NDI observers saw orderly queueing in the voting precincts visited and the efficient processing of voters. Election officials generally followed procedures in the polling places observed by the delegation, including identifying voters on the FRR, punching voter registration cards, applying indelible ink to voters' left-hand pinky fingers, and stamping ballot papers. In polling places where officials used the Addition to the FRR Form to add voters' names to the

<sup>&</sup>lt;sup>1</sup>The Declaration is available at www.ndi.org/DoP.

<sup>&</sup>lt;sup>2</sup>Findings based on reports from 475 Rapid Response Observers deployed proportionally throughout the country. http://eccliberia.com/2017/12/26/ecc-runoff-election-day-mid-day-statement/

FRR, this process was used specifically to add appropriate categories of voters in line with National Elections Commission (NEC) procedures pertaining to security agents, poll workers, NEC staff or drivers and assistants to international observer missions. Polling officials also systematically tracked voters on the Gender Data Capturing Sheet.

## **Magistrate Level Intake and Tabulation**

NDI observed the intake and tallying process at 13 of the 18 tally centers on December 26 and 27. The process was scheduled to begin at 9:00 am; in many of the places observed it began at approximately 11:00 am. This resulted in centers staying open after the scheduled 5:00 pm closing time. The general environment was calm and orderly, with no security issues. Tabulation took place in a transparent environment. Copies of Record of the Count Forms were made available to party agents and posted publicly at the tally centers. Most teams observed at least one Record of the Count Form containing a discrepancy. With respect to 11 Record of the Count Forms, discrepancies could not be reconciled. Teams also witnessed minor procedural issues such as the receipt of unsealed Tamper Evident Envelopes with which the tally staff duly communicated with the NEC in all but one instance. Tally center staff at some of the centers did not enter the details of male and female voters on the Gender Data Capturing Sheet for all polling places, stating that this would take place in Monrovia. NDI observers are still monitoring the process as tabulation continues.

The delegation noted that political parties have respected the NEC as the sole actor that has legal authority to announce election results.

## ELECTION CONTEXT AND BACKGROUND

#### **Election Administration**

October 10 Election Process and Inter-Election Period

On October 10, 2017 the NEC delivered elections that were generally well-administered, but did include issues such as long lines and problems with the voter roll, also captured in NDI's October 12 statement of preliminary findings. After the election, the NEC's performance became the subject of election-related litigation, introduced by various parties and candidates from the Liberty Party (LP) and UP. Notable among the complaints raised were: concerns that voters had been disenfranchised, that widespread irregularities had taken place and that Liberians' constitutional rights had been violated.<sup>3</sup> In its December 7 opinion, the Supreme Court ruled that the parties had failed to provide evidence of electoral fraud beyond a reasonable doubt and that the election could proceed. From November 6 through December 7, the Supreme Court placed a stay on all election preparations for a runoff election while the case was pending.

When it was legally permitted to do so, the NEC took steps during the inter-election period to address several of the administrative challenges that emerged during the first round. These steps included: recruiting approximately 1,000 additional poll workers with science, technical

<sup>&</sup>lt;sup>3</sup>On October 23, the Liberty Party (LP) filed a case with the NEC to contest the presidential election results, alleging massive irregularities, widespread fraud, and violation of Liberians' constitutional rights. Unity Party (UP) later joined the LP claim. When the NEC ruled that the LP and UP had failed to prove electoral fraud beyond a reasonable doubt, the parties appealed to the Supreme Court. While the hearing was ongoing, the Liberty Party filed a Petition for Writ of Prohibition before the Supreme Court, asking the Court to halt all preparations for the runoff election. On November 6, the day before the scheduled runoff election, the full bench granted the Writ of Prohibition.

and engineering backgrounds to better ensure proper and timely accounting for ballots at the polling places; hiring more queue controllers tasked with directing voters at the voting precinct to the appropriate polling place; releasing updated voting procedures; and posting signs with serial numbers to make it easier for voters to identify the correct polling place within each precinct. The NEC also adopted new voting procedures, retrained poll workers and took steps to improve the layout of voting precincts to facilitate the processing of voters. The NEC also planned to coordinate its deployment efforts with the Election Security Task Force such that security agents would accompany the transportation of electoral materials at the beginning and at the closing of the polls.

## Final Registration Roll (FRR)

Since the publication of the voter roll in September 2017, questions about the FRR have been raised by political parties, civil society, election observers and media, as well as featured in the *LP & UP vs. NEC* case. On December 7, the Supreme Court mandated that the NEC clean the roll to remove "multiple names of identification number" in consultation with the political parties. With assistance from a team of ECOWAS technical experts, the NEC developed and executed a roadmap to remove duplicate voter identification numbers from the roll, reissue cards with new unique identification numbers as appropriate, and undertake additional manual de-duplication. Following the Supreme Court's opinion, the NEC took steps to improve the roll in the inter-election period given the short timeline to organize a runoff election within the constitutional deadline and the registration procedures used. Previous efforts at de-duplication took place in August and September and are assessed in NDI's October statement.

Communication with parties and other stakeholders around these steps, however, was not sufficient to engender widespread confidence in the process. For example, the NEC did not publicly communicate updated disaggregated figures by gender, county, electoral district or polling place following the clean-up exercise. Although political party representatives were invited to several briefings on the ECOWAS technical assistance and roadmap, representatives of UP, in particular, expressed concerns that they had not received a definitive copy of the FRR following the ECOWAS-assisted cleaning process. Moreover, statements made on the radio by the NEC Communications Director after the Supreme Court opinion, indicating that the FRR did not require additional cleaning, raised concerns among party leaders and some segments of the public about the NEC's commitment to genuine implementation of the spirit of the Supreme Court directive.

#### The October 10 Tabulation Process

The tabulation process continued for several days, taking longer to complete in more populous counties such as Montserrado. Tabulation largely took place in accordance with established procedures, although observers noted that a number of Record of the Count Forms contained arithmetic errors occasioned by the polling staff in the polling places and necessitating rectifications during tallying. The NEC Tally Procedure lacks some clarity regarding the process to follow in the event of the subsequently quarantined results. Although the lack of clear guidance prolonged tabulation in some instances, the overall tabulation process was quite transparent. Candidate agents as well as citizen and international observers

<sup>&</sup>lt;sup>4</sup> As a result, the NEC removed 361 records from the list for a total of 2,183,268 registered voters.

<sup>&</sup>lt;sup>5</sup> On December 21 the Supreme Court levied a \$500 fine on NEC Communications Director Henry Flomo and ordered his incarceration for 2 days for contempt of the Supreme Court.

were present in each of the tally centers that NDI observed. The NEC Board of Commissioners announced the final results on October 19.

# **Electoral Dispute Resolution**

The NEC has jurisdiction to adjudicate electoral complaints and disputes in the first and second instances, which may then be appealed to the Supreme Court. Following the October 10 elections, the NEC's county magistrates and hearing officers received a total of 98 complaints, all but two of which related to elections for the House of Representatives. Hearings generally proceeded smoothly and cases were largely processed expeditiously, although the holding of hearings and resolution of some cases was at times delayed and went far beyond the constitutional timeline. In some instances, political parties proved unprepared to argue cases or provide witnesses and evidence; in other instances, the process was slowed by a lack of uniform procedures for notifying the political parties about the hearing schedule. Although the hearings are public, additional steps could be taken to ensure sufficient transparency of the process. The hearing room at the NEC does not accommodate a large audience and the rulings are delivered only to the interested parties; in only one case was a ruling publicly posted to the NEC website. The role of the NEC as both defendant and judge under the framework for dispute adjudication creates a potential for conflicts of interest; in practice, however, the NEC Hearing Officer and Board of Commissioners seems to have provided a fair process for all complaints filed around the legislative elections.

The LP & UP vs. NEC case was heard from October 27 until November 24 at the NEC, then heard by the Supreme Court on appeal on December 1. Less than a week later, the Court issued its opinion, which critically examined the evidence presented, and ultimately released a detailed opinion concluding insufficient evidence of electoral fraud had been presented and that the runoff election could proceed. Both parties and their supporters peaceably accepted the Supreme Court's December 7 opinion, although the UP continued to express serious concerns about the NEC's impartiality and capacity to organize elections as well as the credibility of the FRR. The delay occasioned by the stay on election preparations, introduced uncertainty into the electoral process.

At earlier junctures in the electoral process, the Supreme Court ruled on cases in which the Court had to make a determination between strictly enforcing the electoral law and allowing for a more inclusive electoral process. Ultimately, the Court ruled on the side of inclusivity, which may have increased confidence in the process. These opinions introduced inconsistencies between legal precedent and the electoral law, which will need to be addressed in the post-election period.

Following the December 26 election, the legal framework again allows for parties to challenge the results. The NEC and the Supreme Court have procedures that could allow for an expedited hearing before the new government is inaugurated on January 22, 2018.

# **Barriers to Women's Political Participation**

Liberian women continue to face significant barriers to contesting and winning elected office. Although 73 percent more women stood as legislative candidates in 2017 as compared to

<sup>&</sup>lt;sup>6</sup> NEC magistrates in the field adjudicate disputes for complaints about election offenses and violations related to the polling places under their jurisdiction and for which the penalty would not exceed 500 U.S. dollars.

Nine cases concerning House of Representatives elections are still pending at the NEC.

2011, ultimately the share of women representatives remains unchanged with nine out of 73 representatives, or 12.3 percent. This figure is well below the regional and global average of 23.5 percent. In the inter-election period, the female CDC vice-presidential candidate continued to be subject to derogatory and unsubstantiated media coverage questioning her personal life, her morality and - as a consequence - her fitness for public office. These lines of argument were consistent with those directed against prominent female legislative candidates in the run-up to the October 10 elections.

## **Youth Political Participation**

Young people played a prominent role in the election process, serving as election workers, party agents, and energetic partisans. During the inter-election period, the CDC in particular engaged with youth supporters - including through the organization of sports contests and games - to encourage their adherence to a peaceful process and to sustain campaign momentum. A new online television station, KMTV, also broadcast live coverage of all the electoral complaint hearings through Facebook and particularly sought to target a youth audience.

## **Political Parties and Campaign Environment**

Both the CDC and UP abided by legal avenues for addressing electoral complaints following the October 10 polls. After the postponement of the runoff, the CDC leadership consistently called for peace and calm, encouraging supporters - especially youth - to wait patiently for the court do its work. UP raised concerns regarding the NEC's impartiality and competence to conduct the elections, particularly with respect to the clean-up of the FRR, and reiterated calls that the NEC Chairman and Executive Director should resign. Notably, however, UP continued to rely primarily on the legal complaint process to address its concerns.

The runoff campaign period, which began on December 12 and lasted only 13 days, proved calm with few campaign-related activities organized. New political constellations began to form as candidates not in the runoff endorsed either the UP or CDC candidate. Party leaders organized some large campaign events in the capital and regional rallies. Both UP and CDC also conducted extensive refresher poll watcher trainings during the campaign period and prepared to deploy agents throughout the country. The UP and CDC also established centralized data collection centers to gather election results from the Record of Count Forms provided to their party agents.

#### **Civic and Voter Education**

In advance of the December 26 election, the NEC conducted targeted radio outreach but - in light of funding and timing constraints - did not organize more intensive outreach efforts or efforts aimed to engage women, youth, or first-time voters. Funds that would otherwise have been available for civic and voter education and the promotion of women's participation were instead used to post copies of the FRR at the polling places. As a result, the NEC did not produce educational posters and banners for the runoff - only a "Know Your Candidate" poster. Observer teams noted a lack of visible civic or voter education materials in some of the precincts where they deployed; civil society actors also expressed concerns about the lack of outreach. The NEC required independent civil society organizations to obtain accreditation in Monrovia before July 2016 in order to conduct civic and voter education activities; this

process may have had an adverse effect on the amount of information about the electoral process available to potential voters in more remote regions of the country.

The invalid ballot rate exceeded 5 percent during the October 10 elections<sup>8</sup> - in excess of the NEC's stated target of 3 percent (although an improvement over the previous rate of 6 percent) - indicating that voter education efforts could have been further reinforced. Based on observations at the counting sites, the invalid ballot rate for the runoff election should be much lower, in large part due to the simpler ballot with only two candidates included.

## Disinformation through Social Media

Since the October 10 elections, online media has been used to disseminate potentially destabilizing rumors, including spurious stories about election results, NEC officials arrested for possession of pre-marked ballots, and manipulation of the FRR. The NEC has largely addressed these instances of misinformation through social media and impromptu press conferences. A fake news report also circulated stating that the UP had withdrawn from the run-off election and was addressed by the party over radio. Although these incidents likely did not have a significant effect on public perceptions of the electoral process, they point to areas of concern for future election management in Liberia, particularly as internet penetration spreads.

# **Civil Society**

During the Supreme Court proceedings, a plethora of civil society organizations issued statements or public calls supporting peaceful adherence to legal avenues for resolving electoral disputes. These organizations included the ECC; the Interreligious Council; the Liberian Elections Observation Network (LEON), National Rural Women, the National Traditional Council of Chiefs and Elders; a constellation of women's organizations active in peacebuilding, human rights and the rule of law calling themselves the "Women of Liberia;" and the Women's Situation Room.

## **Electoral Security**

To date, the security situation in Liberia has remained peaceful notwithstanding an incident when rocks were thrown at the house of a female Associate Justice of the Supreme Court while the Court was hearing the *LP & UP vs. NEC* case. The LNP has taken proactive steps to address potential problems, engaging in scenario planning around likely post-election hotspots and security risks - including risks related to violence, unrest, the security of government assets and possible disruption of public services. The LNP's efforts to mitigate these risks have included community policing activities and outreach to youth political party wings and communities of motorcyclists on the importance of nonviolence.

## **Recent Significant Political Developments**

The success of this election would set the stage for a democratic transition. On December 25, President Ellen Johnson Sirleaf signed into law a presidential transition bill, *Executive Order No. 91*, which provides a preliminary framework for a smooth and efficient transition

<sup>&</sup>lt;sup>8</sup> The rate of invalid ballots for the legislative races was lower than for the presidential race in all but two counties. However, the NEC did not engage in an audit of the invalid ballots of the first round, as the envelopes containing them are still sealed in the ballot boxes used in October 10.

between the outgoing and incoming administrations. The bill names a Presidential Transition Team and establishes the team's functions and powers.

The newly elected House of Representatives, which will also take office in January, includes many first time legislators. At this time, 71 out of 73 seats in the House of Representatives have been declared, with results still outstanding in two electoral districts. Only 29 incumbents were re-elected out of a total of 58 that stood for re-election.

## PRELIMINARY RECOMMENDATIONS

In the spirit of international cooperation, the delegation offers the following recommendations on steps that can be taken to enhance confidence in future elections process and further consolidate democratic institutions in Liberia. As NDI continues to observe the election process to its conclusion, further recommendations may also be offered.

## To the Government of Liberia:

- Upon the final resolution of the electoral outcome, engage fully in the implementation of *Executive Order No. 91* regarding the establishment of a Joint Presidential Transition Team to ensure an orderly handover from one administration to the next.
- Integrate a review of the legal framework for elections into the ongoing constitutional review process, and ensure through an inclusive and transparent process that gaps or inconsistencies do not exist between the elections law, the constitution and legal precedents.
- Review electoral dispute resolution mechanisms to avoid potential conflicts of interest and ensure that timelines for each stage of the process are reasonable and clear.
- Ensure that, given that approximately two-thirds of the legislature is made up of newly elected members, efforts are made to give them the appropriate orientation to have a clear understanding of public sector administration and the legislative process.

## **To the National Elections Commission (NEC):**

- Release provisional results in a timely fashion to enhance citizen confidence in the transmission and tabulation process.
- Provide polling place-level results in an easily analyzable (machine readable) format on the NEC website.
- Ensure that complaints to the NEC, should they arise, are adjudicated in a timely manner and in accordance with the legal framework.
- Create a platform to facilitate an open and observable national-level tabulation of results.
- Make available to the public data gathered on the Gender Data Capturing Sheet about respective rates of women and men's participation as voters.
- For future elections, eliminate impediments to civil society involvement in civic and voter education.
- Conduct a review of the 2017 voter registration process to improve the integrity of a future voters register.
- Identify future entry points for greater transparency such as the solicitation of an independent audit or procedures for the list to be publicized in full in a timely manner.

# **To the Political Parties and Candidates:**

• Call on supporters to refrain from acts of intimidation and violence and encourage productive citizen engagement in politics. Raise awareness of, and express zero

- tolerance for violence against women in the electoral process, including towards female candidates.
- Take proactive measures throughout the electoral cycle to recruit, train and provide leadership opportunities for women to successfully meet the threshold of 30 percent.
- Address electoral grievances through the official complaint mechanism and in accordance with the evidentiary standards set by the Supreme Court in its December 7 opinion.
- Draw on experiences and lessons learned from the 2017 election cycle to consult on, and advance recommendations for electoral reform.
- Engage in proactive measures to strengthen consultative mechanisms with the NEC, such as the Inter-Party Consultative Committee.
- Utilize information gathered on those individuals especially youth and women who stood as candidates or volunteered as poll watchers to find opportunities to sustain their engagement with the party structures in the post-election period.

## **To the Security Services:**

- Complete and make public results of investigations of any election-related incidents in a timely fashion to enhance public confidence and combat impunity.
- Build on the successes of the decentralized, community-based policing approach used during the electoral period to consolidate security sector reforms.

## **To Civil Society:**

- Continue to provide evidence-based, politically impartial findings on the tabulation, results announcement, and electoral dispute resolution processes, as well as specific recommendations that can improve the process for future elections.
- Come together to compile lessons learned for reaching women, youth, rural and first-time voters with an eye to conducting more effective, targeted civic and voter education campaigns during future elections.
- Monitor political processes, including in the post-election period and with respect to electoral reforms.

## To the Media:

• Report only verified information; clearly distinguish between articles written by journalists, editorials, and materials that are produced by outside sources and published for a fee. Discourage inciteful language and dispel rumors.

## **To the International Community and Development Partners:**

• Continue to stand in solidarity with the Liberian democratic process through support to democratic activists at all levels of society, as well as the sharing of lessons learned and best practices for peaceful political transitions.

#### To all Stakeholders:

• Engage in ongoing civic and voter education around issues related to elections, legal disputes, and citizen engagement during all aspects of the electoral cycle, including between elections.

#### ABOUT THE MISSION

NDI's 36-member election day mission visited Liberia from December 22-30, 2017, during which it held meetings with political party leaders, presidential and legislative candidates, election officials, security officials, civil society representatives, the media, international election observers, and the diplomatic community. The delegation included political leaders, civic leaders, and election experts from 18 countries across Africa, Europe, and North America.

On December 26, observers deployed in 16 teams to 11 counties across Liberia, where they met with local government and election officials, and representatives from political parties and civic groups. On election day, the delegation observed the opening of the polls and voting and counting processes in more than 150 polling places at 146 voting precincts across the country. The observers reported regularly on developments around the country and returned to Monrovia to share their findings. The delegation observed tabulation process in 13 tally centers on December 27 and 28 and will continue to observe tabulation until completion.

NDI began its international election observation mission in February 2017. The delegation benefited from a team of four long-term election analysts and six long-term observers who, since July, have visited more than two-thirds (59) of Liberia's 73 electoral districts in all 15 counties and conducted thousands of meetings with state authorities, election officials, candidates, and political party representatives, civil society organizations, the media, and international and diplomatic missions in Liberia. NDI's mission observed voter registration, campaign events, and trainings of poll workers, sessions of the NEC and Inter-Party Consultative Committee, and election complaint hearings. NDI's analysts and long-term observers will continue to monitor the post-election period.

## **NDI Delegates and Mission Staff**

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NDI is a nonprofit, nonpartisan organization dedicated to supporting and strengthening democratic institution worldwide through citizen participation, openness and accountability in government. Over the last 25 years, NDI has conducted more than 150 election observation missions in 62 countries. NDI first worked in Liberia in 1997. The Institute has maintained a permanent in-country office in Liberia since 2003. Current NDI programs in Liberia, which include technical assistance for voter education, citizen election monitoring, women's participation, and poll watching for all political parties, are funded by USAID.