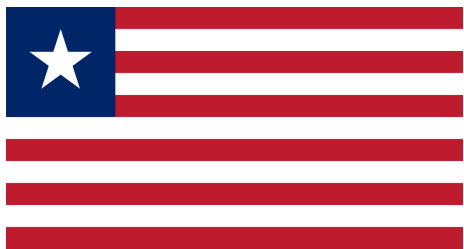


Final Report

European Union Election Observation
Mission (EUEOM) Liberia 2017



Presidential and House of
Representatives Elections



REPUBLIC OF LIBERIA

EUROPEAN UNION ELECTION OBSERVATION MISSION

FINAL REPORT

GENERAL ELECTIONS 2017

MARCH 2018

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I. EXECUTIVE SUMMARY

The Presidential and the House of Representatives (HoR) elections held on 10 October 2017, followed by the 26 December Presidential run-off, marked a defining moment in the nation-building process that Liberia initiated after its civil wars. As the country continues to struggle with enduring economic difficulties and the impact of the recent Ebola crisis, the first post-conflict elections entirely managed by Liberians achieved a significant milestone in the strengthening of its democratic institutions.

While a number of complaints filed in the wake of the first round stalled the election process, giving rise to uncertainties amongst both the stakeholders and the electorate, the 2017 elections eventually resulted in the first transfer of power **from one elected government to another** through a competitive multi-party system. During the resolution of the electoral disputes, political parties repeatedly called their supporters to remain law-abiding and patient. This bolstered the commitment of Liberian voters and citizens to the rule of law, which allowed for the conclusion of a peaceful voting exercise.

Campaigning remained predominantly calm except for sporadic cases of inflammatory language and isolated incidents of violence. Whereas the latter were rapidly addressed by the national authorities, instances of divisive rhetoric continued to fuel some tensions. Political messages often revolved around the candidates' character and personal achievements. As some leading candidates chose to absent themselves from organised debates and considering that a majority of parties failed to articulate their platform among the general public, Liberian voters did not enjoy a genuine issue-based campaign.

Evidencing the entrenchment of democratic practices, political actors stood by their various commitments to resolve disputes through mediation and address grievances via legal recourse in accordance with the resolutions signed under the **Ganta Agreement** and the **Farmington River Declaration**.

Although the 1986 Constitution predates many of Liberia's ratifications and accessions to important international and regional legal instruments with implications for elections, key fundamental rights consonant with international standards are enshrined in it. While this is a solid basis for the conduct of democratic elections, in some important respects, the **Constitutional legal framework** does not fully accord with Liberia's international legal obligations.

The ethnicity-based definition of **citizenship** is not consistent with Liberia's international commitments. Inter-institutional and political consensus building could help overcome challenging hurdles and strengthen Liberia's democratic processes. The willingness of numerous stakeholders to engage on such matters should be capitalised upon to progress on key issues after the elections.

Citizens who were eighteen but attained that age between the date of closure of voter registration and actual polling days were denied **the right and opportunity to vote**. Such gaps have the potential to discourage youth engagement. The right to vote was also not afforded to pre-trial and convicted detainees, the hospitalised or citizens who could not access their assigned Polling Place.

Some primary and secondary **legislative provisions** lack precision. Requirements for promoting women's political participation were especially weak. Some conflicts existed on complaint and



appeals timelines, indicating the scope for a needed consolidation of related legal provisions that would enhance overall transparency and ensure greater legal certainty.

A perceptible inequality of the vote emerged based on the numbers of registered voters per **Electoral District** for the 2017 House of Representatives elections. The political settlement from 2010 was perpetuated despite constitutional provisions for a regular revision of constituencies. Failure to address this issue will continue to contribute to a widening disparity in equality of the vote between counties and constituencies contrary to international standards.

A range of sanctions found in the **New Elections Law (NEL) and National Elections Commission (NEC) regulations**, from fines to periods of detention, apply with some degree of incoherence. The circumstances in which certain sanctions apply ought to be clearly articulated to avoid potential for uneven or arbitrary application. This is particularly so regarding restrictions on the future right to vote or to stand.

While **complaints** targeting the results of the elections and the manner in which they were adjudicated helped to clarify unclear timelines, the application of various civil procedure rules in some instances diluted the certainty of timelines. Numerous complaints and legal actions failed for lack of evidence or on technical grounds. While most matters were disposed of within constitutional timelines, some cases could have been handled more expeditiously. Proceedings demonstrated some shortcomings in the professional capacity of some lawyers on various contesting sides during various stages of the hearings. One of the important challenges facing Liberia's judiciary - training of lawyers - remains a key issue for the efficient functioning of judicial institutions.

The fact that a complainant can enter a complaint by a 'back door' mechanism of adjointment to other existing complaints, but outside the official prescribed time for making a complaint, undermines the provisions set out in the election law.

NEC regulations were broadly sufficient to ensure due process. There is scope to enhance capacity in future elections by ensuring that **Hearing Officers (HO)** trainings are commenced well in advance and adopt a more practical approach. NEC hearings and appeals, including those at the Board of Commissioners (BoC), were fully accessible to the public and media ensuring transparency. The same applied to hearings before the Supreme Court.

A July 2017 **Supreme Court (SC)** decision on candidate eligibility contributed to the inclusivity of the election, although this appeared to have come at some reputational expense as many stakeholders alleged the SC had been politicised. The disputed provisions in the National Code of Conduct for all Public Officials and Employees (Code of Conduct Law, CoCL) remain constitutional but such restrictions on the right to stand do not accord with international standards.

On 6 November, the SC issued a **Stay Order** on the holding of the Presidential run-off election, giving preference to the public interest nature of a complaint alleging violation of the Constitution, widespread fraud and gross irregularities, and to the due process rights of the complainant despite the speculative nature of the complaint. The complaint was finally rejected by the SC owing to a lack of sufficient evidence.

The decision of the SC to impose run-off conditions on the NEC contributed to some uncertainty about the prospects of holding a second round in line with constitutional timelines. Through various interventions, including the deployment of an ECOWAS technical team, the NEC was able to comply with the SC conditions.



The current implementation of **campaign and political party finance** regulations was insufficient to guarantee equality, transparency and accountability of the election process. While the legal framework offers a comprehensive set of rules, the NEC lacks the capacity and expertise for its effective enforcement. To level the playing field, future steps need to focus on ensuring a full and systematic application of the regulations.

In the absence of enforceable enabling mechanisms as well as timely capacity-building programmes, **female candidate participation in the elections** remained far below the thirty per cent target. Only nine women (12.3 per cent) were elected to the new House of Representatives, the same number as in the previous legislature.

Civil society was actively involved in the electoral process. Two civil society networks undertook comprehensive domestic election observation, contributing to the transparency of the electoral process. Procedures to facilitate participation of **Persons living with Disability (PwD)** were introduced but should be further streamlined and improved.

Freedom of speech in the **media** was broadly respected during both campaign periods. However, the existing legal framework falls short of appropriate regulation with respect to ensuring fair and equitable access by contesting parties and candidates to state-controlled media, thereby failing to guarantee a level playing field between candidates.

In the campaign leading up to the 10 October elections, imbalanced coverage provided by the state-owned broadcaster and a media sector reliant on political sponsorship affected the right of access to media by candidates with less financial means. During the campaign period for the rescheduled run-off, the state-owned radio demonstrated a more reasonable balance of airtime allocation between the two presidential candidates in news bulletins, representing an improvement of coverage on the first round. While a wider use of social media increased the public debate, it also offered a greater opportunity to disseminate false and misleading contents.

II. EU EOM RECOMMENDATIONS

In five months the mission issued two preliminary statements one after each Election Day, and one public statement after the resolution of the electoral complaints between the two rounds of elections. In this Final Report that was finalised in March 2018¹, the EU EOM offers 23 recommendations of which six are considered priority.

PRIORITY RECOMMENDATIONS

- A. *The legislature could initiate a constitutional referendum process for the successful removal of the ethnic definition of Liberian citizenship. Working co-operatively and using advocacy and civic education could contribute to the alignment of Liberia with its international and regional obligations prohibiting racial discrimination.*

¹ All EU EOM Liberia 2017 public statements including this report can be found under the following link: https://eeas.europa.eu/election-observation-missions/eom-liberia-2017_en



- B. The legislature might consider undertaking a review of article 83 of the Constitution 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.*
- C. Consider progressing towards a passive voter registration system based on a reliable Civil Register thus enhancing participation in elections and addressing uncertainties inherent to active voter registration.*
- D. The opportunity to vote for all qualified citizens, including, persons turning eighteen between registration and Election Day, as well as detainees and the hospitalised, should be granted. The legislature could equally consider legislating for Absentee Voting to facilitate voting rights for such categories of voter unable to access their Polling Place on Election Days.*
- E. Modify legislation (NEL 4, §4.5, consider enacting the Affirmative Action Bill) and NEC Candidate Nomination Regulations for enforceable affirmative action for women participation and ensure greater representation in decision-making roles within the election administration. Implement capacity building for prospective female candidates and measures for higher integration of women in political parties throughout the electoral cycle.*
- F. Consider the extension of domestic observation groups to the whole electoral cycle to reinforce the role and participation of civil society in monitoring and reform of the electoral process. Civil society organisations can play a crucial role between election periods and contribute with their knowledge to the enhancement of future elections by following the implementation of their own recommendations as well as those of international observation missions that are no longer present in the country.*

FULL LIST OF RECOMMENDATIONS

LEGAL FRAMEWORK (SECTION V OF REPORT)

- 1. The legislature could initiate a constitutional referendum process for the successful removal of the ethnic definition of Liberian citizenship. Working co-operatively and using advocacy and civic education could contribute to the alignment of Liberia with its international and regional obligations prohibiting racial discrimination.*
- 2. The legislature to review the election law and civil procedure laws to consolidate all relevant timelines and extensions to such timelines (arising either under legal practice or civil procedure rules) to ensure transparency, accessibility and ease of comprehension for all election stakeholders.*
- 3. The legislature, in consultation with the Supreme Court, could consider the establishment of a lower appeals court to alleviate an overburdened Supreme Court, which could equally contribute to the expeditious handling of cases including election complaints.*
- 4. The legislature to review and amend the 2014 Code of Conduct Law and promote participation and the right to stand. The Liberian Civil Service Standing Orders allowing*



leave of absence could facilitate presidential public appointees to stand for election without having to fully resign in preparation for an intended political candidacy.

5. **The legislature could undertake a review of the criteria for the establishment and registration of political parties with a view to promoting more cohesion and policy in party political organisations.** Such a review could consider membership requirements (considering the growth in Liberia's population since the standing legislation was promulgated), changes to the number of constituencies where parties draw their membership, as well as the levels of registration fees payable.
6. **The NEC to undertake a review of regulatory requirements relating to political parties' nomination of candidates and the assessment procedures related to minimise pro-forma nominations and ensure that political parties actively promote nominees with genuine candidacy potential.**
7. **The legislature should undertake a review of the NEL provisions on electoral offences to address and remove any ambiguities and incoherencies as well as reviewing the scope and breadth of penalties and sanctions to ensure greater certainty and enforceability.**

ELECTORAL COMPLAINTS AND DISPUTE RESOLUTION (SECTION VII OF REPORT)

8. **The NEC to review and amend all appeals timelines in its regulations to ensure consistency and fairness throughout.** The review could entail a moderate extension of the 48 hours timeline for appeal from Hearing Officers to the Board of Commissioners (BoC) to ensure due process and equal access across Liberia.
9. **The NEC to develop a syllabus of practice-based trainings for lawyers involved in election dispute resolution and Hearing Officers to be implemented well in advance of the next elections** with the possibility for refresher trainings. Such trainings could ensure enhanced capacity in the effective administration of election complaints and contribute to matters avoiding becoming unduly burdened and delayed by unnecessary legal formalities.
10. **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.**

ELECTION ADMINISTRATION (SECTION VIII OF REPORT)

11. **Timely publication of the NEC BoC decisions that are of public interest could translate into enhanced transparency, public engagement and broader public trust.**
12. **Delimitation of electoral constituency boundaries should be reviewed in accordance with the Constitution and Liberia's international obligations.**
13. **Consider progressing towards a passive voter registration system based on a reliable Civil Register thus enhancing participation in elections and addressing uncertainties inherent to active voter registration.**



ELECTION CAMPAIGN (SECTION IX OF REPORT)

14. *Political parties and their **poll watchers' commitment to the integrity of the electoral process must be supported and strengthened.** Considering that electoral complaints typically rely on party agents' reports and testimonies, political parties must conduct their recruitment, training and deployment more professionally.*
15. *With a view to prevent the holding of conflicting campaign events that could induce violence, effective management of larger political gatherings would benefit from the **formulation of harmonised regulatory requirements in one single legal instrument** to be issued by the NEC and enforced by the NEC in cooperation with Security Services.*

PARTY FINANCE (SECTION X)

16. ***Establish an appropriately resourced department on campaign and political party finance within the NEC** to enhance the institution's capacity and expertise for an efficient enforcement of regulations. The unit would be responsible for conducting systematic verification of submitted accounts, application of sanctions where applicable and conducting information campaigns among political actors.*
17. ***Increase the NEC's capacity to scrutinise submitted reports** by establishing or strengthening co-operation and information-sharing with private banks and relevant state tax and integrity institutions, e.g. Liberia Revenue Authority, Ministry of Justice, Liberia Anti-Corruption Commission, Financial Intelligence Unit.*

HUMAN RIGHTS (SECTION XI OF REPORT)

18. ***The opportunity to vote for all qualified citizens, including, persons turning eighteen between registration and Election Day, as well as detainees and the hospitalized, should be granted.** The legislature could equally consider legislating for Absentee Voting to facilitate voting rights for such categories of voter unable to access their Polling Place on Election Days.*
19. ***Modify legislation (NEL 4, §4.5, consider enacting the Affirmative Action Bill) and NEC Candidate Nomination Regulations for enforceable affirmative action for women participation** and ensure greater representation in decision-making roles within election administration. Implement capacity building for prospective female candidates and measures for higher integration of women in political parties throughout the electoral cycle.*
20. ***Further improve access and opportunity of the right to vote for Persons with Disabilities (PwDs) through measures for better accessibility of Polling Places,** provision of Tactile Ballot Sleeves, and mainstreaming of voter information in general Civic and Voter Education. Consider introduction of mobile registration and the Absentee Voting to facilitate homebound voting.*

MEDIA (SECTION XII OF REPORT)

21. ***Consideration should be given to introduce a legal provision for free airtime to political parties and candidates in the state-owned broadcaster** to allow all election contenders to effectively communicate their platforms to the public and contribute to the equal treatment*



of political parties and candidates. Such time should be allocated in a fair and non-discriminatory manner, based on transparent and objective criteria.

22. *The preservation of a free media environment is essential to ensuring that Liberia's efforts to safeguard peace and stability and protect fundamental human rights are achieved with success. The government could show its commitment towards this end by **implementing a genuine media reform to include appropriate regulatory structures with safeguards against unwarranted government intervention.***

CIVIL SOCIETY AND CITIZEN OBSERVERS (SECTION XV OF REPORT)

23. *Consider the extension of domestic observation groups to the whole electoral cycle to reinforce the role and participation of civil society in monitoring and reform of the electoral process. Civil society organisations can play a crucial role between election periods and contribute with their knowledge to the enhancement of future elections by following the implementation of their own recommendations as well as those of international observation missions that are no longer present in the country.*

III. EU EOM METHODOLOGY

The European Union Election Observation Mission (EU EOM) to Liberia is independent, including from governments, and strictly neutral, with no vested interest in the outcome of the election. The EU EOM Liberia 2017 does not have any hierarchical or administrative links with the EU Delegation in Liberia and was not involved in the EU Delegation's political and technical support for the electoral process, which included a 10 million EUR project implemented by UNDP. However, the EU Delegation gave all appropriate assistance and information to the EOM in accordance with the two bodies' respective mandates.

The EU EOM followed an established methodology² and adheres to the Declaration of Principles for International Election Observation endorsed at the United Nations in October 2005³. The EU EOM assessed the whole electoral process against the laws of Liberia as well as Liberia's international and regional obligations and commitments for elections. This Final Report⁴ presents the EU EOM conclusions and recommendations for future elections.

² The strength and added value of EU election observation missions is given by the fact that they are based on a robust and comprehensive methodology, which is the warrant of its credibility. Its fundamental principles of independence, impartiality, consistency, long-term approach and professionalism are set out in the 2000 communication from the European Commission on EU election assistance and observation. They cover all phases of the election period: pre-election, Election Day, and immediate post-election. EU election observation missions do not interfere in the organisation of the election itself. Instead, they collect and analyse factual information concerning the election process and provide an independent public assessment.

https://eeas.europa.eu/topics/election-observation-missions-eueoms/421/election-observation-missions-eueoms_en

³ Declaration of Principles for International Election Observation endorsed at the United Nations in October 2005:

https://eeas.europa.eu/topics/election-observation-missions-eueoms_en/6699/Declaration%20of%20Principles%20for%20International%20Election%20Observation

⁴ All EU EOM Liberia 2017 public statements including this report can be found under the following link:

https://eeas.europa.eu/election-observation-missions/eom-liberia-2017_en



Following an invitation by the National Elections Commission and the Ministry of Foreign Affairs of Liberia, the EU EOM deployed to the Republic of Liberia in September 2017 and left the country in January 2018.

This was the second time the EU deployed a fully-fledged observation mission to Liberia after the 2005 elections. An Election Expert Mission (EU EEM) was deployed for the 2011 elections.

The Mission was led by its Chief Observer, Maria Arena, Member of the European Parliament (MEP) for Belgium, appointed by the High Representative of the European Union for Foreign Affairs and Security Policy.

The mission was present throughout the fifteen counties and 73 electoral districts of Liberia with a Core Team of 11 electoral analysts in Monrovia, 20 Long-Term Observers deployed nationwide and near to each Election Day the mission was reinforced with the presence of 34 Short-Term Observers from 28 EU Member States, Norway and by members the EU diplomatic community.

Apart from the EU EOM the elections were observed by a range of international and national observation missions including the Economic Community of West African States (ECOWAS), the African Union (AU), the Electoral Institute of Southern Africa (EISA), the Carter Centre (TCC), the National Democratic Institute (NDI), the Liberia Elections Observation Network (LEON) and the Elections Coordinating Committee (ECC). The EU EOM maintained close relations with all these groups through regular meetings.

The EU EOM wishes to express its appreciation to the NEC and the Ministry of Foreign Affairs, the Supreme Court of Liberia, the Liberian National Police (LNP) and all other institutions, authorities, civil society and political organisations of the Republic of Liberia for their kind and forthcoming cooperation and assistance throughout the Mission's presence. Additionally, the EU EOM is most grateful for the constructive engagement with all national and international election observation missions and other international actors during the Liberian electoral process, in particular with ECOWAS, African Union, UNMIL and ECC.

The EU EOM also expresses its appreciation to the European Union Delegation and the diplomatic missions of EU Member States in the country (France, Germany, Sweden and the United Kingdom) for their continued support throughout the process.

IV. POLITICAL BACKGROUND

The 2017 elections in Liberia marked a defining moment in the transitional process that started after the civil wars⁵. The first post-conflict elections entirely managed by Liberians achieved the important goal of strengthening the country's democratic institutions and processes.

With the withdrawal of the United Nations Mission in Liberia (UNMIL) being imminent, the transition from an extended peacekeeping period to a new era of peace consolidation and sustainable development culminated in the 2017 elections⁶. Whereas the risk of wide-scale

⁵ Liberia experienced two civil wars between 1989-1997 and 1999-2003. The signature of a Comprehensive Peace Agreement in Accra brought an end to the conflict.

⁶ The United Nations Mission in Liberia (UNMIL) was established by the Security Council Resolution 1509 (2003) and extended for a final period until March 2018 following the adoption of Resolution 2333 (2016).

violence was considered low throughout the electoral process, deeply rooted socio-political cleavages continued to generate tensions. The **peaceful handover of executive power** became the leitmotiv underlining the significance of these elections in preserving the country's stability. All candidates and political parties were urged to commit to violence-free elections through adherence to formal declarations signed by most of them⁷, where the signatories agreed to address potential disputes exclusively via mediation and/or judicial means.

Twenty candidates stood for election to the Presidency⁸. Considering the required absolute majority to be elected to the highest office, the 10 October ballot was widely expected to result in a run-off election. On the same day, Liberians also voted to elect members of the HoR in a first-past-the-post legislative election⁹. 986 contenders competed for one of 73 seats in the lower house, either as independents (90) or among candidates from 26 political parties¹⁰. Strong political competition provided the Liberian voters with a multiplicity of options.

In the **quasi-absence of public debates** and considering that political messages mainly revolved around the personality of the candidates, voters were not offered policy-orientated elections. The majority of political parties elaborated a detailed platform outlining their respective priorities for the country. However, most candidates were unable to publicise their manifesto among the general public and failed to articulate concrete policy proposals, thus depriving the electorate of a genuine issue-based choice.

Before the first round, political parties expressed overall confidence in the electoral process despite some reservations on different aspects, including the NEC's capacity to deliver as well as cases of abuse of public office by the ruling Unity Party (UP)¹¹. In a country where public officials across 15 counties are centrally appointed by the Presidency, the EU EOM observed how the UP's standard-bearer initially benefited from support networks established during his 12 years as Vice-President¹². However, in a context of apparent divisions within the ruling party, the privilege of incumbency was eventually curtailed.

⁷ Virtually all the contending parties have signed the Ganta Agreement (23 September 2016) and the Farmington River Declaration (4 June 2017), in which they commit to ensure an orderly and peaceful election process. Although not legally binding, this gentlemen's agreement has been respected by all the stakeholders, including the four political parties registered after the signature of these resolutions.

⁸ Twenty presidential candidates including only one female contender.

⁹ Liberia's legislature is bicameral, but the 30-seats upper house follows a different constitutional timeline (the next Senatorial elections are scheduled for 2020).

¹⁰ The candidate listing issued by the NEC mentions a total of 984 candidates for the House of Representatives. Following a number of appeals, the NEC announced during its 31 July press conference that the final official figure was brought up to 986. This figure does not, however, tally with the total of candidates counted by different international observation missions, including the EU EOM.

¹¹ Some interlocutors were concerned by the observed involvement of local authorities in the ruling party's campaign activities, for instance using official ceremonies as a platform to canvass in the presence, amongst others, of civil servants and administrative staff.

¹² In the lead-up to the first round, EU EOM observers reported how appointed officials at different levels of the counties' administration actively campaigned for the presidential candidate of the ruling party, including during working hours.



After the announcement of the final results of the 10 October ballot, the environment turned increasingly antagonistic. While the two candidates going forward to the Presidential run-off ramped up efforts to solicit support and establish alliances with leaders of different political parties, a climate of distrust gradually settled in. The ruling party publicly expressed its solidarity with other parties alleging that widespread irregularities took place during polling and tallying. In parallel to several public statements calling for the rerun of the first round, some aggrieved parties' concerted efforts translated into formal complaints, one of which resulted in the Supreme Court suspending the second round of the Presidential election initially scheduled by the NEC for 7 November¹³.

Following the resolution of complaints and appeals filed in the wake of the 10 October ballot, the second round of the election to the Presidency was eventually held on 26 December 2017. Political parties remained publicly committed to the promotion of non-violent elections and the rule of law throughout.

The Inter-Party Consultative Committee (IPCC) meetings played a positive role in encouraging dialogue and consensus-building between political parties and the NEC¹⁴. However, such meetings were frequently convened without sufficient prior notice, which deprived the forum of the attendance of high-ranking party leaders, impairing swift decision-making. Between the two rounds of the presidential election, a sustained level of engagement in the forum allowed for a continuous mediation process. EU EOM observers reported that similar meetings were replicated in some of the counties.

On 1 November, a **joint mediation mission** led by Presidents Alpha Condé of Guinea and Faure Gnassingbé of Togo arrived in Monrovia¹⁵. Following a tête-à-tête with their Liberian counterpart, the Heads of State invited the aggrieved parties and other relevant actors to the table of discussions¹⁶. This high-level visit rapidly put in motion a variety of ECOWAS-led accompanying measures, both at political and technical levels, to assist Liberia's institutions in the resolution of the stalemate¹⁷.

¹³ cf. Legal Framework

¹⁴ The Inter-Party Consultative Committee is a consultative forum convened by the NEC, in line with provisions established by the Memorandum of Understanding (MoU) between the NEC and registered political parties that was signed in February 2016.

¹⁵ President Condé participated in his capacity of Chair of the African Union (AU). President Gnassingbé succeeded to Liberian President Johnson-Sirleaf in June 2017 as Head of Authority of the Economic Community of West African States (ECOWAS). The intervention of regional partners was decided in line with co-operation provisions of the African Charter on Democracy, Elections and Governance, as well as the ECOWAS Protocol (cf. African Charter on Democracy, Elections and Governance, 30 January 2007 (ACDEG) and ECOWAS Protocol on Democracy, Elections and Governance (A/SP1/12/01) supplementary to the Protocol relating to the mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security).

¹⁶ Standard-bearers of the six political parties with the highest numbers of votes after the first round were invited to join the talks, in addition to the Inter-Religious Council of Liberia, representatives of the Council of Chiefs and Elders, the NEC Chair and the Supreme Court Justices. The diplomatic corps representing AU and ECOWAS Member States were also present, as well as UNMIL top officials.

¹⁷ cf. Election Administration

V. LEGAL FRAMEWORK

A Constitution granting key fundamental rights predates many of Liberia's international and regional election commitments, underscoring a need for necessary reform.

Although the 1986 Constitution predates many of Liberia's ratifications and accessions to important international and regional legal instruments with implications for elections, **key fundamental rights** consonant with international standards and relevant to the conduct of genuine elections are **enshrined** in the fundamental law of the state¹⁸. These include the right to vote, periodically and by secret ballot¹⁹. While this is a **solid basis** for the conduct of democratic elections, in some important respects the Constitutional legal framework does not accord with Liberia's international legal obligations.

There is **room for improvement** and reform in the areas of citizenship and on some voting rights. Liberia stands out among the majority of its fellow ECOWAS member states, having a highly restrictive ethnicity-based **definition of citizenship**²⁰. The relevant constitutional provision excludes from political participation many persons of non-Negro descent born in the country and, as such, is **not consistent with Liberia's international commitments** nor international law generally²¹. Accordingly, those who otherwise qualify but are not afforded citizenship on the basis of their ethnicity, among them Indians and Lebanese minorities, are denied the right to vote contrary to Liberia's international obligations. Reform here could contribute to improved participation among women, disabled, detainees and other vulnerable, marginalised or underrepresented sectors of society.

Constitutional reform, though necessary, could prove challenging in circumstances where the provision on **amendments involve a high threshold for change**²². The Constitution has only been amended once since 1986. Concerted efforts, including inter-institutional and political consensus

¹⁸ In the last decade, Liberia has accelerated ratifications and accessions to international and regional legal instruments with implications for elections, complementing a body of standards on civil and political rights arising under provisions and international customary law aspects of the Universal Declaration of Human Rights (UDHR). Among the principle treaties to which Liberia is party are the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention against Corruption (UNCAC), and the Convention on the Rights of Persons with Disabilities (CPRD). Regionally, Liberia is party to the African Charter on Human and Peoples' Rights (ACHPR) while, as a founding member of ECOWAS, the country has also recently adopted the ECOWAS Protocol. Additionally, several treaties have been fully brought into national law, among them the ECOWAS Protocol.

¹⁹ See, e.g., ICCPR, article 25.

²⁰ See Constitution, Article 27 (b) limiting citizenship by birth or naturalization to persons who are Negro or of Negro descent. The restriction on citizenship to persons of Negro descent is found in the Constitution of one other ECOWAS State – Sierra Leone. "Citizenship Law in Africa: A Comparative Study", Manby, B., 2010, <http://www.unhcr.org/4cbc60ce6.pdf>.

²¹ E.g. UDHR, Article 2.1, ICCPR, Article 2, CEDAW Article 7, Protocol to the ACHPR on the Rights of Women in Africa (ACHR-PW), Article 9.1, African Charter on Democracy Elections and Governance (ACDEG), Article 8.

²² Article 91 of the Constitution requires a proposal is, firstly, backed by either two thirds of both houses of the legislature or a petition of no less than 10,000 citizens with the concurrence of two thirds of both houses of the legislature. Thereafter, and no sooner than one year following action of the legislature, a referendum ratifying the proposal by two thirds of the valid votes cast must be achieved.

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.

Positive signals of Liberia's intentions to align itself with its international and regional commitments - a basis for building momentum.

While the legal framework does expose **some shortcomings**, there is awareness of the importance of Liberia's international obligations and, equally, evidence of willingness on the part of numerous stakeholders to engage such matters. In recent years, leading to the 2017 elections, Liberia's Governance Commission²³ and the Constitutional Review Committee²⁴ have been actively engaged in **reform proposals** in which international and regional commitments have been prominent²⁵. 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 stakeholders²⁶. During a number of pre-election SC actions, the status of certain Liberia's international and regional commitments were cited by parties to those actions and confirmed in subsequent judgments of the Court²⁷. The NEC at a key point during the elections availed of technical assistance in accordance with the ECOWAS Protocol²⁸. **Such momentum is a positive indicator** and should be capitalised upon for progress and reform on key issues.

A solid legislative and regulatory base was impacted by some imprecisions and definitional gaps fuelling uncertainty and diverging stakeholder practice.

²³ Governance Commission Annual Governance Report: The Liberian Electoral System, Monrovia – February 2017.

²⁴ Since 2013, the Constitutional Review Committee (CRC) assisted by the Governance Commission (GC) and the Law Reform Commission (LRC) has spearheaded a constitutional review process.

²⁵ "External factors . . . and international commitments to growing democracy, such as Liberia's commitment to the ECOWAS Supplementary Protocol on Elections and Good Governance, can be among external drivers of electoral democracy within a West African country" -Governance Commission Annual Governance Report: The Liberian Electoral System, Monrovia – February 2017 at p. 30.

²⁶ The CRC produced its final report in 2016, including 25 proposals for reform. Delegates were divided on a number of issues but voted against change on the citizenship issue, while advocating for the redefining of Liberia as a Christian state. On 17 November 2016, the HoR endorsed 7 of the proposals, including the retention of the ethnicity basis of citizenship. However, they did approve the recommendation to shorten terms for the elected office and enhanced participation of women. The HoR has also endorsed the proposition to amend article 83(a) of the Constitution moving elections from October to March.

²⁷ *Abu Bana Kamara v. NEC*, SC 21 July 2017 - The SC held that ECOWAS Protocol was part of national law, although found it did not apply to the legislation in the case before them. The SC interpreted that the opposed legislative amendments were procedural rather than substantive amendments. Notwithstanding, the SC assertion that the ECOWAS Protocol does not apply to legislation enacted before the ECOWAS protocol does not seem to accord with the purpose of the protocol to prevent amendments to any election legislation less than 6 months prior to an election. <http://judiciary.gov.lr/abu-bana-kamara-vs-national-elections-commission/>

²⁸ Article 4.2, ECOWAS Protocol on Democracy and Good Governance (A/SP1/12/01)

"Member States shall cooperate in this area with a view to exchanging experiences and where necessary providing technical assistance to each other in the production of reliable voters' lists." ECOWAS deployed a technical team to assess the Final Registration Roll (FRR), in respect of which they issued a report and also provided assistance to the NEC in making certain corrections, including a measure of deduplication. See also Election Administration.



Key pieces of primary and secondary legislation for the 2017 elections included the 1986 New Elections Law (amended on a number of occasion, lastly in 2014)²⁹ and the Regulations of the NEC³⁰. Overall, the legislative and regulatory framework addressed matters essential to the conduct of genuine elections, however, **some provisions lacked precision**. Requirements for promoting women's political participation were especially weak³¹. Some conflicts existed on complaint and appeals timelines³². Other provisions offered **insufficient guidance to ensure coherent application**³³. Additionally, legal provisions impacting, for instance, campaigning, candidacy, and timelines for electoral disputes were to be found in a variety of other legislative and regulatory instruments, which were not always accessible to all stakeholders³⁴.

This **lack of consistency** in some aspects of the legislative and regulatory framework fuelled uncertainty and created **space for diverging practice** among political and institutional stakeholders. For instance, a lack of clarity pertained to the notification requirements for the holding of large campaign events³⁵. The timelines on election complaints and appeals set out in the election laws and regulations were subject to rules and procedures of the Civil Procedure Law, which varied such timelines. Whereas various rights of appeal from decisions of the NEC are often stated to arise within a range of 48 hours to 7 days, the reality is that those timeframes are subject

²⁹ New Elections Law 1986 (amended 2003, 2004 and 2014) Codified by the Department of Codification, Ministry of Justice, 2016. <http://www.necliberia.org/document.php?&a4705305cd27e04fb1f66830e7e0ef9d=Mw%3D%3D>

³⁰ During the period 2016 and early 2017 the NEC promulgated eight sets of Regulations spelling out eligibility to vote, rules for polling and counting, procedures on voter registration, candidacy, campaigning, and campaign finance, election Disputes and Hearing Procedures. A further set of revised regulations on polling and counting were issued in December 2017 prior to the presidential run-off election.

³¹ The sole provision on women's representation in NEL article 4.5.1 creates a soft obligation whereby political parties shall "endeavor" to have 30 per cent female governing body representatives and candidate nominees.

³² "A candidate rejected by the NEC during the candidate nomination period may appeal the NEC's decision to the Supreme Court within 48 hours after the NEC's determination." NEC Regulations on Complaints and Appeals, Article 5.1 (Candidate Nomination Challenges), whereas article 11.4 states in regard to the same matters "An aspirant whose application has been rejected may appeal the NEC's decision to the Supreme Court within three (3) days of the NEC's determination."

³³ The law does not provide sufficiently clear guidance on the administration of hearings where the regulations provide only that "legal technicalities obtaining in courts of law shall not apply except as to matters which tend to prejudice the right of party." NEC Hearing Regulations, article 7.3.

³⁴ Certain provisions of a 2014 Code of Conduct Law (2014 CoCL) and the 2015 New Police Act (An Act to Repeal the Act Amending the Executive Law with respect to the National Police Force as well as any other acts amendatory thereto; and the Decree of the People's Redemption Council establishing the National Police Academy Repealing Subchapter E, The Police Academy, Title 12, Chapter 22, Ministry of Justice; and to Amend Chapter 22, Ministry of Justice, Subchapter D, Liberia National Police, and to Establish in lieu thereto, The Liberia National Police Act, 2015 (LNP) - http://www.linlea.org/images/Liberia_Law/Liberia_National_Police_Act_2015.pdf) (LNP) also applied. Additionally, some rules on timelines contained in the Civil Procedure Law [2011] LRLRES 11 (www.liberlii.org/cgi-bin/disp.pl/lr/legis/codes/cplt11colr470/cplt11colr470.html?stem=0&synonyms=0&query=civil%20procedure%20law) (hereafter CPL) came to prominence during the election complaints process.

³⁵ Obligations and requirements on notifying of campaign events were scattered variously across NEC regulations, Codes of Conduct and in the NPL.

to extension from one to three days depending on circumstances³⁶. Consequently, there is **scope for the consolidation of related legal provisions to ensure greater certainty**.

Gaps in the law governing the rules for hearings or appeals in some matters appear to have contributed to criticism of the NEC³⁷. In a number of pre-election appeals cases, the SC noted a lack of attention by the NEC to due process in the handling of candidacy applications. Conflicting timelines for appeals on rejection of candidacies appear to have caused some concern³⁸. A **comprehensive review** of the above matters could enable the closing of some gaps and **enhance overall transparency and certainty**.

The Supreme Court played a prominent role throughout the election process, albeit with some pressures, controversies and need for additional resourcing and reforms.

The absence of an appeals tribunal (Court of Appeals) between the lower courts and tribunals and the highest court in Liberia necessarily implies an overburdened SC faced with numerous appeals of various kinds³⁹. Additionally, the law allows a restricted period of seven days within which the SC has the opportunity to adjudicate conduct of election and results appeals cases brought before it. This contrasts sharply with the 30 days available to the NEC. Occasionally, the Supreme Court came under pressure to be seen to act swiftly despite significant volumes of pleadings presented for review in some cases⁴⁰. The appointment of an Appeal Court could go some way to alleviating such pressure points.

Nonetheless, the SC was active leading up to and throughout the 2017 elections, handing down a number of rulings with significance for election stakeholders and the conduct of elections. The Court addressed the nature and quality of the right to vote and found that, although the right is not contained within the fundamental rights section of the Constitution, it constitutes a fundamental right⁴¹. Such a ruling could be a source of encouragement to citizens who find reason to challenge undue impacts on or deprivations of their rights to vote and wish to seek legal redress against agencies allegedly impugning the right. In another action before it, the SC positively upheld the argument that the **ECOWAS Protocol** is part of Liberian national law⁴². However, another aspect

³⁶ Civil and procedural rules, for instance, discount non-working days such as holidays and Sundays in the calculation of appeal timelines specified to be under 10 days. Supreme Court rules also allow a period of three days for a re-hearing after a final adjudication.

³⁷ See e.g., Abu Bana Kamara v. NEC, SC 21 July 2017. The NEC Regulations and Guidelines Relating to Political Parties and Independent Candidates (February 2017) are silent on the right of failed independent candidates to seek a hearing against their rejection by the NEC. The SC considered notwithstanding that such a person is entitled to due process.

³⁸ Amos Sieh Siebo, Jr v NEC, SC 5 September 2017. <http://judiciary.gov.lr/national-elections-commission-v-amos-sieh-siebo-motion-to-dismiss-final-judgment/>

³⁹ The SC acknowledged a significant backlog of cases on its books (exceeding some 150 cases) with material shortages of staff and resources. Other issues involved the bringing of very minor matters on appeal before the court which ought to be disposed of in a lower appeals tribunal.

⁴⁰ Non-electoral appeal cases are necessarily vulnerable to postponement to facilitate the prioritisation of election cases.

⁴¹ Selena Mappy Polson v Government of Liberia, SC, 3 March 2017.

⁴² Abu Bana Kamara v. NEC, SC 21 July 2017 - The SC interpreted that the opposed legislative amendments were procedural rather than substantive. <http://judiciary.gov.lr/abu-bana-kamara-vs-national-elections-commission/>

to that case appears at odds with the intended purpose of the relevant ECOWAS Protocol provision. The SC found that the prohibition on amending legislation within six months of an election did not apply to legislation promulgated in 2014⁴³.

There were a number of other important cases touching upon the constitutionality of certain provisions of laws⁴⁴ or questioning the practice of the NEC in its administration of various aspects of the elections⁴⁵. Some such matters entailed **controversy**. The SC determination of the constitutionality of certain provisions of the 2014 Code of Conduct Law, barring from candidacy some **presidential appointees** in public office, led to public disquiet, which was exacerbated when that decision was later diluted to permit some of such candidates to run⁴⁶.

A 2011 Constitutional amendment reveals need for NEC vigilance.

In one key ruling⁴⁷, touching upon the only successful **amendment to the Constitution (in 2011)**⁴⁸, the SC determined that the amended article meant first round disputes (and any associated appeals) must be fully adjudicated before setting the date of any run-off⁴⁹. In setting a run-off date for 7 November, the NEC had proceeded on the basis that the 2011 amendment did not impact its rights to set the run-off date. The NEC, going forward, should exercise vigilance in conducting a comprehensive **review** of any future constitutional amendments before proceeding with election planning to avoid misinterpretations and negative **impacts on NEC election programming**.

Voting rights for citizens, set out in the Constitution and law, require strengthening to ensure the right is supported by the opportunity.

Voting is subject to the requirements of citizenship, registration in a place of domicile, and the voter having attained the age of eighteen. Some **citizens** were not afforded the opportunity to exercise their franchise contrary to Liberia's international commitments. Citizens who were eighteen but attained that age between the date of closure of voter registration and actual polling days were **denied the right and opportunity to vote**. For such persons, whose number is estimated as significant, it may now be another six years before their right to vote in the House of

⁴³ The SC view that the ECOWAS Protocol does not apply retroactively to legislation enacted before the ECOWAS Protocol was adopted does not seem to accord with the purpose of assuring legislative certainty and to prevent short notice amendments to election related legislation. It is noteworthy however that the amendment in question was procedural in nature and not substantive.

⁴⁴ Karnwea

⁴⁵ Amos Sieh Siebo, Jr v NEC, SC 5 September 2017.

⁴⁶ E.g., Harrison Karnwea and Liberty Party v NEC, SC 20 July 2017. Candidates such as Mr. Karnwea who demonstrated they had resigned within a reasonable timeframe of the original SC ruling were allowed to run on the basis that the NEC had other sanctions at its disposal and not solely disqualification. Similar decisions prompted a number of HoR Representatives to the impeachment proceedings against a number of the SC justices. E.g. <http://allafrica.com/stories/201708040594.html>

⁴⁷ Charles Walker-Brumskine and Others vs NEC, SC 6 November 2017.

⁴⁸ Only one of four 2011 proposals for amendment to the Constitution was passed (after an SC appeal related to it). Firstly, the successful amendment changed the system of election of members of the HoR from an absolute majority to a simple majority system. Secondly, the implementation of that amendment involved a complex restructuring of the previous version of article 83, which impacted the timeline for handling disputes.

⁴⁹ See section below, Election Complaints and Appeals



Representatives and Presidential elections arises again⁵⁰. This deprivation of voting rights constitutes a **lack of effective measures** to ensure the right can be exercised by that class of citizens in accordance with ICCPR, article 25⁵¹. Additionally, such gaps in registration and voting opportunities have the potential to discourage youth engagement.

While the Constitution foresees the **possibility of Absentee Voting**⁵², a mechanism which could be usefully employed to extend the franchise to those without the possibility - for various reasons - to access their Polling Place, the law does not currently legislate for this possibility⁵³. Additionally, and contrary to its international commitments⁵⁴, the right to vote was not afforded to pre-trial and convicted detainees or the hospitalised citizens who could not access their assigned Polling Place.

The right to stand was impacted by a number of legal gaps and uneven conditions, which operate against the interests of candidates, citizens and political development.

The current legal framework lacks clear provisions on the determination of candidacy applications and leaves space for the rejection of some **candidates** without affording them **adequate rights of appeal**⁵⁵. This gave rise to a number of cases being brought directly to the SC prior to the elections, highlighting the need to address a gap in due process rights. Despite this, there was a **high level of candidate participation**, although the law could be enhanced to make such levels of participation more inclusive and representative⁵⁶. By example, effective measures for enhanced women's participation through more favourable registration requirements, including lower processing fees, could be adopted.

Eligible persons had the right to stand either as party or independent candidates for the HoR or the Presidency, subject to some **uneven legal conditions**⁵⁷. While it is broadly accepted that some varied restrictions may be acceptable for election to certain public offices, consideration could be given in Liberia to reducing the 25-year **age threshold for candidacy** to the HoR, having regard

⁵⁰ Data not been accurately ascertained prior to the 2017 elections but, in light of Liberia's population growth in recent decades, the numbers rate potentially important.

⁵¹ See ICCPR Article 25 and Human Rights Committee General Comment (HRC GC) 25 at par. 11.

⁵² Constitution article 80(c).

⁵³ Absentee voting which provided the right also for out of country voting was omitted in 2004 from the NEL at Section 5.5

⁵⁴ General Comment 25 to ICCPR article 25 at paragraph 14 makes it clear that persons in detention but not convicted should not be deprived the right to vote.

⁵⁵ NEC Regulations on nominations for candidacy only articulate that rejections of candidacies be notified in writing.

⁵⁶ See Section - Political Context above.

⁵⁷ See Constitution articles 30 (b) and 52. Also, While the NEL imposes the duty to be a taxpayer on all candidates, the Constitution lays that condition only for HoR and Senate candidates, but not for the presidential aspirants. Also, the Constitution places a requirement of ten years of residency on presidential candidates 'prior to his election', the NEL provides that 'for all elected offices' candidates be domiciled in their constituency for twelve months prior to Election Day⁵⁷. Although there is some confusion around these concepts, the NEL appears to go beyond the Constitution in terms of candidacy conditions in this regard. However, the 10 year residency condition for the presidency appears to have ambiguous constitutional standing, which would warrant its review.

to the fact that a citizen may become a judge at the lower age of 21 years⁵⁸. Such a review could also serve to promote greater participation among Liberia's increasingly educated youth population and counter the potentially dissuasive effects on **youth participation** referred to earlier.

The right to stand does not apply to many levels of regional, county and local representatives as such offices are mostly subject to presidential appointment. Advancing proposals for local elected offices and giving effect to constitutional provisions for the election of chiefs could help in promoting political engagement and **candidate capacity building**.

A number of controversial SC decisions related to the 2014 CoCL impacted the right of presidential public appointees to stand in the run up to the 2017 elections⁵⁹. Notably, a July 2017 **SC decision contributed to inclusivity**, although this appeared to have come at some reputational expense as many stakeholders alleged the SC had been politicised⁶⁰. However, the disputed provisions - requiring presidential public appointees to **resign from office** between two and three years before election (depending on their rank) – remain constitutional. Such restrictions on the right to stand do not accord with international standards. Thus, in the alternative, rules applied in the Liberian Civil Service Standing Orders could facilitate presidential public appointees to apply for leave of absence rather than resign in preparation for an intended political candidacy⁶¹. This approach would bring Liberia into line with international commitments and could also **promote greater participation** generally and, especially, by competent female presidential appointees.

A competitive field of political parties exposes some weaknesses in the nominations process, with room to adopt mechanisms to promote women candidates and political platforms.

Since 26 political parties were registered with the NEC and competed in the 2017 elections, Liberia's framework for political party formation and registration appears to encourage strong **political party competition**⁶². The framework, however, does not seem to provide adequate mechanisms to encourage enduring party cohesion and **platform-based politics**. On the contrary, fledgling political organisations with genuine policy platforms, but who perform weakly, have little chance of growing due to **limitations** on subsequent **rights to participate**⁶³. Such limitations are not aligned with the Constitution or Liberia's international and regional commitments. They

⁵⁸ Restrictions must be reasonable and based on objective criteria. See ICCPR Art 25 and HRC GC 25 at par.15. In Liberia, the age thresholds for elective office are 25 for HoR, 30 for Senate and 35 for President.

⁵⁹ See, Selena Mappy Polson v. Government of Liberia, SC 3 March 2017. See also, Harrison Karnwea and Liberty Party v NEC, SC 20 July 2017.

⁶⁰ Liberty Party Vice Presidential Candidate, Harrison Karnwea, for example, held public office for a year before the question of Constitutionality of the 2014 CoCL was raised, but he was allowed to stand on the basis he resigned his post within days of the March 2017 SC decision declaring the ban on candidacy for such persons was constitutional.

⁶¹ This approach was also advocated in the dissenting opinion of Justice Wolokolie in. Selena Mappy Polson v. Government of Liberia, 3 March 2017.

⁶² In addition to the relevant Constitutional provisions at Constitution Article 78 and 79., the NEC issued new regulations covering party political registration⁶². A political party, as distinct from other forms of association, must include among its activities canvassing for votes on any public issue or in support of a candidate for elective public office. Political parties are subject to relatively low registration processing fees (1,800USD).

⁶³ Art 5A.1 NEL provides for the suspension of a political party for the next two elections if the party fails to win a seat or gains less than 2% of the vote. This provision appears to create a further limit the right to stand for either the legislature or the presidency as articulated in the Constitution. [preceding sentence is not clear]

could also hinder the motivation of competent candidates and, potentially, **militate against female candidacies**, where electoral politics favours a dominance of male participation⁶⁴.

Political parties could comply with the **NEC nominations requirements**, but without making any genuine effort to ensure that their nominees would be approved as candidates. This may result from the **nominations process**. The NEL regulates the right to stand through political parties. The political parties must, in the case of the HoR, nominate candidates for NEC approval to run in at least **37 of the 73 constituencies**. The law does, however, not give adequate certainty on the qualifications of such nominees. Accordingly, a political party may nominate candidates across over 50 per cent of constituencies to fulfil a legal condition for the party to compete, but even if most of the nominees do not succeed in passing the qualifying process, the party can still participate. Many parties participating in the 2017 elections eventually had **fewer candidates** (and in far fewer than 37 constituencies) qualified to run **than the number they nominated**⁶⁵. By complying with the nominations requirements but focusing only on securing candidacy for a smaller select group of candidates, a political party can compete on the basis of specific, **sectional or localised interests**.

Efforts to promote parties with policy substance could be addressed through **revised fee structures** and a **review of the party registration requirements** such as membership and national presence in line with growing population trends and the increased number of counties since the requirements were initially laid down⁶⁶. Such an approach would also be preferable to other provisions in the NEL, including those aimed at excluding political parties from future competition simply on the basis of poor election performance. This also combined with the absence of a robust regulatory support framework for their inclusion in political party structures may especially negatively impact women candidates standing on behalf of smaller or weaker parties.

A perceptible inequality of the vote between constituencies signals need for an early review following the next census.

A **perceptible inequality of the vote** emerged on the basis of the numbers of registered voters in each county for the 2017 elections. The Constitution mandates the legislature to set constituency sizes in line with **population growth and movement**, while the NEC is charged with reapportioning constituencies on the basis of **census data**⁶⁷. The last census conducted in Liberia was undertaken in 2008, whereas it is widely agreed that the country has seen a significant **population growth** and movement in the interim period⁶⁸. While the drawing of constituency boundaries is subject to some limitations on the reach of **constituency boundaries** (i.e. they must

⁶⁴ General Comment 25 to ICCPR article 25 at paragraph 15. “No person should suffer disadvantage of any kind because of that persons’ candidacy”.

⁶⁵ *Lavela Korbo Johnson v. CDP and Ors.*, SC 23 September 2017. Challenge to 11 political parties with candidates in less than 37 constituencies. The SC notes the threshold applied only to the nominations process and not the actual candidate participation.

⁶⁶ The current membership and national spread requirements predate the current county total of 15. At least 4 new parties were registered as late as June 2017.

⁶⁷ Constitution Article 80.

⁶⁸ Optimal timely use of population data is difficult, since article 39 of the Constitution requires a census once every ten years with the next due in 2018, thus preceding the next Presidential and HoR elections by 5 years.

be contained within county boundaries⁶⁹), Electoral districting for 2017 applied as a consequence of a political settlement in 2010⁷⁰. This, coupled with a dearth of accurate population data, underscores **need for action**. Failure to address these issues will continue to contribute to a widening disparity in equality of the vote between counties and constituencies contrary to international standards⁷¹. This situation underpins some of the limits of active periodic voter registration. Efforts to develop an **effective civil registry**, from which both population data and voter registration could be derived with greater certainty and less long-term cost, should be encouraged and expedited.

A related issue arises from the 2011 amendment to article 83 of the Constitution. This amendment simplified and potentially contributed to making the HoR elections less costly. However, a simple majority system, combined with single seat constituencies and ethnically concentrated groups, could contribute to the promotion of independent candidacies with a platform focused on specific tribal interests. Tracking such possible issues could be greatly enhanced and more manageable with reliable population and constituency data.

VI. ELECTORAL OFFENCES

A low level of election offences and a comprehensive body of sanctions - the latter with scope for amendment to remove uncertainties in the law.

Over the course of its pre-election observations, the EU EOM noted a **low level of election related offences** or prosecutions. Allegations pertained to campaigning on Election Days or during the period of silence and a few cases of poster destruction were also recorded. In a number of instances, some polling staff were arrested on allegations of pre-marking ballots. However, most such allegations, after initial investigation, were dismissed for **want of evidence**⁷².

The broad body of election related offences covering the pre-election, Election Day and post-election periods evidences **scope for a review** that would improve certainty, set more balanced penalties and provide enforceability. A range of sanctions found in the NEL and NEC regulations, from fines to periods of detention, apply with some **degree of incoherence**. While some specified offences allow for fines against natural persons up to 5,000 Dollars (false impersonation⁷³), that penalty appears to be at odds with a limit on fines imposable on natural persons, which is set at

⁶⁹ While the Constitution proposes constituency population of 20,000 the NEC mandate is limited as there can be no more than 100 constituencies (currently 73) and they must always be contained within county boundaries.

⁷⁰ “Joint resolution LEG-002 (2010) of the Senate and the House of Representatives of the 52nd Legislature of the Republic of Liberia on the setting of an electoral threshold for the conduct of the 2011 Presidential and Legislative elections in Liberia” August 12, 2010 and subsequent “Statement on the Announcement of Final Electoral Districts for the 2011 Elections by Hon. James M. Fromayan, Chairmen of the National Elections Commission (NEC) Friday, July 8, 2011.

⁷¹ ICCPR, art 25. See also HRC GC 25 at par. 21

⁷²In at least one instance, a poll worker was sentenced to a period of detention for alleged ballot stuffing the incident led to the holding of a re-run of the ballot for the polling station on 17 October (Dulay, Nimba Electoral District 4).

⁷³ NEL Article 10.8

500 Dollars maximum elsewhere in the NEL⁷⁴. The NEL also refers variously to dollars (presumed to mean the official Liberian currency) or US dollars, thus embedding some further uncertainty⁷⁵.

The circumstances in which certain sanctions apply ought to be very clearly articulated in the law in order to avoid **potential for uneven or arbitrary application**. This applies particularly in the case of penalties with restrictions on the future right to vote or to stand⁷⁶.

While the law provides for detention as a deterrent in some electoral offences, there is evidence of a lack of capacity for the effective implementation of such penalties given the significant waiting times for trial in other matters, overcrowded detention centres and prolonged periods of pre-trial detention.

VII. ELECTORAL COMPLAINTS AND APPEALS

Political stakeholders utilise prescribed dispute resolution mechanisms, although complaints, notwithstanding a high degree of transparency, reveal legal uncertainties and a need to strengthen the capacity of legal representatives handling election cases.

Evidencing the **entrenchment of democratic practices** throughout the election process, political actors stood by their various commitments, including under the Farmington River Declaration, to resolve concerns in accordance with **various dispute resolution mechanisms**⁷⁷. Generally, all complaints are referred to the NEC in the first instance, with **appeal rights** extending to the SC, the final arbiter in all election related matters. Complaints can be broadly grouped as a) those that cannot affect election results and b) those that can. The former lack precise timelines for adjudication, a consequence of which is that, for example, a disputed candidacy could remain unadjudicated very close to Election Day⁷⁸. While complaints targeting the results of elections, or the manner in which they were conducted, have specified timelines, the application of various civil procedure rules, undermined **the certainty of timelines** in some instances⁷⁹.

⁷⁴ NEL Article 10.27 (b). The intention of the article may be to cover references to articles where fines are not specified, although the drafting leaves this as uncertain in the law.

⁷⁵ E.g., 500 dollars is one of the specified sanctions for offences such as plural voting unlawful disclosure of a vote.

⁷⁶ The suspension of such rights for up to 7 years applies to the electoral offences of Bribery and Undue Influence.

⁷⁷ The legal framework for elections complaints and appeals is predominantly embodied in two NEC regulations NEC Regulations on Complaints and Appeals and Hearing Procedures.

⁷⁸ *Lavela Korbo Johnson v. CDP and Ors.*, SC 23 September 2017. SC decision of 23 September 2017 to throw out a challenge to several political parties, meant those parties were in a position of uncertainty for most of the initial campaign period.

⁷⁹ Timelines specified in both Constitution and the NEC regulations. As noted previously, notwithstanding the precise timelines accorded for such matters, additional periods may also apply under Civil Procedure Rules.

Over the course of the electoral process, numerous complaints and legal actions were filed with the NEC and the SC, although the majority failed for **lack of evidence** or on technical grounds⁸⁰. While most matters were disposed of within constitutional timelines, some cases could have been handled more expeditiously as anticipated by regulation⁸¹. In this regard, proceedings demonstrated some **shortcomings in the professional capacity** of lawyers on all sides as well as among some of those administering various stages of the hearings. One of the important challenges facing Liberia's judiciary - training of lawyers - remains a key issue for the efficient functioning of judicial institutions. In many instances, proceedings at first instance were saddled with **excessive formality** resulting in some delays and confusion. This also appeared to stem from involved stakeholders preferring to apply formal court style rules despite regulations making clear this was unnecessary [in most circumstances]⁸².

As electoral disputes are handled by the NEC, some stakeholders questioned its **capacity to conduct hearings** and appeals in an independent manner, as this arrangement can result in adjudications of complaints of the NEC against itself. However, the regulations, coupled with rights of appeal to the SC, are **broadly sufficient to ensure due process**. EU EOM observers also reported that HOs and MEOs enjoyed broad public trust. Importantly, during various HO trainings the independence of the HO role was stressed. Nonetheless, there is scope to enhance capacity by ensuring that HO trainings in future elections are commenced well in advance and adopt a less theoretical and more practical approach. NEC hearings and appeals, including those at BoC were fully accessible to the public and media ensuring a **high degree of transparency** – a notable aspect which also applied to SC Appeal hearings.

There is a **lack of precision** and certainty available to the public through the elections law on timelines associated with complaints⁸³ and aspects of various mechanisms for complaint filing. In some actions, complainants from remote areas argued the law operated against them since the **48 hours appeal time** from decisions of HOs to the BoC in Monrovia made **compliance difficult**. This is an aspect of the appeals process that warrants review. Elsewhere, the fact that a complainant can enter a **complaint by the 'back door'** mechanism of adjournment to other existing complaints,

⁸⁰ E.g. some appeals were filed from HOs to the MEOs with complainants assuming that the MEOs were the correct offices to file BoC appeals, whereas the regulations require all appeals from decisions of HOs to be filed with the BoC in Monrovia.

⁸¹ NEC Election Hearing Procedures Regulation article 7.1.

⁸² NEC Election Hearing Procedures Regulation at art 7.3 states "Legal technicalities obtaining in courts of law shall not strictly apply except as to matters which tend to prejudice the right of a party". The Supreme Court Justice Wollokollie also raised concerns about excessive formality in the investigative stages of complaint hearings at the NEC.

⁸³ Appeals against NEC decisions to the SC are required to be done with 7 days. The NEL makes no mention of the fact that CPL rules omitting Sundays and public holidays apply. Further, even when the SC makes a final ruling in a case, the CPL also allows another 3 days for re-hearing applications, which casts a further degree of uncertainty over timelines and the finality of rulings.

but outside the official prescribed time for making a complaint, undermines the provisions set out in the election law⁸⁴.

In the run up to the October 10 election some 40 complaints⁸⁵ were raised by various parties and candidates touching upon matters related to qualification of candidates⁸⁶, eligibility of political parties⁸⁷ and NEC decision making processes⁸⁸. A number of cases reached the SC and provided an opportunity for the SC to clarify certain matters of law, but also drew early attention to issues of legal practice including the **lack of preparedness** of lawyers acting in cases coming before the court⁸⁹.

A low number of Election Day complaints despite a wide presence of party agents but some shortcomings in the recording of complaints.

Voters, party agents, political parties and candidates with concerns on the Election Day could file complaints to either Polling Place Presiding Officers (POs) or directly with Magisterial Election Offices (MEO). In many instances, proper **procedures** for recording of complaints at PPs were **not always applied**. According to EOM observations, log books or complaints forms in some instances were not available⁹⁰. In any event, the overall **level of formal complaints** filed on Election Day were reported as **low** and, in many instances, POs were able to resolve matters in situ. Among the total number of PPs observed by the EU EOM, just 8 outstanding complaints were noted by the end of polling on 10 October. The EU EOM equally noted a **high presence of both party/candidate agents** and national observers during the first round. In one instance, a successful complaint filed due to some missing ballot boxes in one Electoral District (ED) in Nimba resulted in a NEC decision to **re-run** the ballot at the concerned Polling Precinct on 17 October⁹¹.

Level of complaints rises following results with key complaints increasing pressure on the NEC.

⁸⁴ The UP complaint was admitted on appeal to the BoC after the deadline for complaint had expired. UP argued their right to intervene under Civil Procedure Rules. The application was denied by the HO and overturned by the BoC.

⁸⁵ Includes actions commenced prior to the EU EOM deployments in Liberia on 31 August, 2017.

⁸⁶ E.g. Jeremiah Sultaneh v NEC, SC 21 July 2017. See above Section 2.1.2

⁸⁷ Lavela Korbo Johnson v. CDP and Ors., (Challenge to the eligibility of 11 political parties).

⁸⁸ Henry Karnwea and Liberty Party v NEC, SC 20 July 2017.

⁸⁹ Lavela Korbo Johnson v. CDP and Ors., The complainant sought to have 11 parties barred from running. He argued that several political parties, fielding less than 37 candidates across at least half of Liberia's constituencies, were not complying with the law. The SC noted that the complainant failed to show he had made proper enquiry to obtain proof of his allegations and that, in any event, the standard he alleged applied to candidacies was, in fact, only applicable to the nominations process.

⁹⁰ However, regulations also provided that a complaint is validly filed as long as all relevant details are adequately recorded.

⁹¹ Nimba County District 4 Beo Bongarplay Tuesday, October 17.

The complaints processes and procedures acquired greater significance following the first round and the declaration of results. **Dissatisfaction among losing candidates** increased the volume of complaints filed at the various MEOs nationwide⁹².

Although the official seven-day timeline for the filing of complaints against results only commenced after the 19 October announcement of results, some complaints were filed in advance⁹³. Following the announcement of results, numerous **complaints were filed by** from individual candidates, while two complaints were filed by political parties⁹⁴. The majority of complaints, filed with **limited evidence**, were swiftly adjudicated and dismissed at HO level. Several complaints were withdrawn by the complainants⁹⁵.

A number of complaints experienced some **delays owing to technical issues** (requiring the referral of cases from the BoC back to HOs for re-hearing) or owing to an accumulation of legal processes. With preparation ongoing for a scheduled 7 November presidential run-off and the BoC awaiting appeal cases coming up to it, **pressure** was beginning to mount **on the NEC**. The latter situation crystallised through a key complaint, which eventually resulted in the suspension of the run-off.

6 November Supreme Court Stay Order favours due process rights despite a speculative complaint which is insufficiently evidenced.

On 6 November, the SC issued a **Stay Order** halting the presidential run-off until the final determination of a complaint raised by the Liberty Party⁹⁶. The nature of the relief granted was that of an injunction (writ of prohibition) against the NEC. Procedurally, and given the **speculative nature of the complaint**, the SC could have required the complainant to provide a bond in favour of the respondent NEC to account for circumstances where the eventual substantive claim might fail. Such a bond appears not to have been required. The SC appeared to give preference to the **public interest** nature of the complaint and the **due process rights** of the complainant.

⁹² After the first round of the election, electoral disputes are appealable from NEC first instance Hearing Officers operating at MEO level to the NEC BoC, whose rulings in turn are appealable, in the final instance, to the SC. While candidates, parties, their respective agents and voters had the right, up to and including Election Day, to file complaints regarding the election process, an individual complaint after Election Day may only be done under the umbrella of a candidate or a party.

⁹³ All Liberian Party (ALP) filed their complaint on 14 October alleging widespread fraud and irregularities. The case was eventually dismissed for want of evidence on appeal to the BoC. ALP did not appeal to the SC.

⁹⁴ Some 85 individual complaints filed. The two -party complaints were filed by ALP and LP on behalf of their candidates, with the Unity Party (UP) joining the LP complaint hearing at the NEC on 28 October under an indirect procedure of adjournment. Of all actions at HO level, some 20 were appealed to the BoC and ultimately, some 6 appeals and other applications were taken to the SC.

⁹⁵ The NEC is accorded by law 30 days from the receipt of a complaint within the statutory deadline of seven days from the date of announcement of results to decide the matter. The 30 days includes the initial investigation and any appeal to the BoC.

⁹⁶ Liberty Party filed a complaint to the NEC on 23 Oct 2017 alleging widespread fraud, gross irregularities and breaches of the Constitution and the NEL but proceeded during the course of their action to seek a stay order until their case was determined.

Additionally, the NEC mounted a **weak legal defence** to the grounds on which the injunction was sought⁹⁷.

Following the Stay Order, the complaint was returned for further hearing of evidence and argumentation at the NEC⁹⁸. Again, during attendances before the NEC, the EU EOM observed further evidence of **inadequate preparedness** among attorneys presenting arguments and pleadings, contributing to an absence of cogent argumentation and some **avoidable delays**.

The **complaint was finally rejected** by the SC owing to a lack of evidence⁹⁹. The SC noted in particular that the complainants had produced **insufficient evidence** of the issues they were alleging, although they clearly had the means to gather such evidence through their party agents at PPs.

The final 7 December decision of the SC also imposed **conditions**¹⁰⁰ **on the NEC** to be implemented prior to the holding of a run-off. These conditions appeared to stem less from the complaint itself and more as a consequence of wording used in the initial HO ruling in the case, which stated - “*NEC is mandated to take necessary steps to correct all what they alluded to as difficulties and challenges before any future election*”¹⁰¹. That imprecise wording, misinterpreted by some stakeholders, had significant implications and contributed to **further uncertainty** about the prospect for holding of the second-round. Through various **interventions**, including the deployment an **ECOWAS technical team**, the NEC was able to comply to the satisfaction of the SC with the conditions¹⁰².

A non-contentious period following the second round affords space to consider the implications of article 83 of the Constitution for future presidential elections.

A further seven-day period for filing complaints opened following the declaration of **presidential results on December 29**¹⁰³. Unlike the highly contentious period between the first round and the rescheduled run-off, by the 9 January no significant issues relating to offences were noted and **no formal complaint** against the conduct of the rescheduled run-off election or the final results was

⁹⁷ Although Liberian law allows for a test to be applied in the determination as to whether injunctions are to be granted, no issue was raised as to whether such a test should apply to a writ of prohibition on elections.

⁹⁸ After an application to join, Unity Party was joined to the Liberty Party action on 28 October, by decision of the BoC.

⁹⁹ Charles Walker Brumskine and Harrison S. Karnwea (1st Appellants) and Joseph Nyumah Boakai and Ors. (2nd Appellants) v. NEC, SC Majority Opinion, 7 December 2017. A further late attempt to obtain another stay order was also defeated. Unity Party v NEC, Bill of Information, SC (majority decision 4-1), 21 December 2017.

¹⁰⁰ These conditions required preparatory actions by the NEC prior to the run-off, including a “full clean-up” of the Voter Register (VR) and the printing and distribution of Final Voter Rolls (FRR) to each magistrate office and all polling stations, NEC compliance with the standards of publication of the FRR, a prohibition on allowing any person not on the FRR to vote, the use of an addendum voter list be confined to the persons specified in the regulations, prohibition on Poll Watchers voting unless registered in the place of assignment and appearing on the FRR, the NEC Board and Staff refrain from prejudicial or biased public statements connected to complaints

¹⁰¹ Joseph Nyumah Boakai and Ors. (Intervenors) and Charles Walker Brumskine, Harrison S. Karnwea and Ors. (Complainants) v. NEC, Hearing Officer Final Ruling, 20 November 2017 at p.9.

¹⁰² Unity Party Bill of Information (Ruling), SC 21 December 2017.

¹⁰³ The period refers to working days including Saturdays but does not include public holidays and Sundays. The complaint period for the second round closed on 8 January, 2018.



filed with the NEC. While no complaint impeded the inauguration of the new President on 22 January 2018, there remains a need to clarify the scope of **article 83** of the Constitution as interpreted by the SC in its decision of 6 November 2017. If necessary, the article should be **reviewed to avoid future impediments** to a presidential inauguration resulting from a potentially protracted second round complaint.

VIII. ELECTION ADMINISTRATION

NATIONAL ELECTIONS COMMISSION

The 2017 elections were overseen by the National Elections Commission (NEC), a constitutional “Autonomous Public Commission”¹⁰⁴ led by seven Commissioners appointed by the President, subject to the consent of the Senate, for a mandate of seven years.¹⁰⁵ Overall, 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 infrastructure¹⁰⁶. It was the first time since the Comprehensive Accra Peace Agreement that Liberia has autonomously organised the elections, although with financial and technical support from the international community¹⁰⁷.

The NEC BoC has regulatory powers and has met in weekly sessions with a quorum requirement of five Commissioners for decisions¹⁰⁸ which are, mostly, subject to an appeal to the SC. The lack of public access to some NEC decisions weakens the adherence of Liberia to its international obligation to provide for the right to effective remedy¹⁰⁹. The BoC sessions were not open to the public and, with some exceptions¹¹⁰, neither their decisions nor the agenda and minutes of the meetings were published. This could be addressed by, for example, using the NEC's website for

¹⁰⁴ The Constitution Art. 89 (B) Oversight includes voter registration, boundary delimitation and electoral dispute resolution as well as political party registration and oversight of their finance.

¹⁰⁵ The seven Commissioners compose the Board of Commissioners (BoC) and elect among themselves the Chair and Co-Chair. The NEC Division of Administration (DA or Secretariat) is headed by the Executive Director (ED) who is responsible for the day-to-day management of the NEC and implementation of election operations. The ED guides also the work of 19 Magisterial Election Offices Magistrates (MEO) who in turn manage 416 ES that oversee 2080 Voting Precincts (polling centers, hereinafter VPs) and 5390 Polling Places (polling stations, hereinafter PPs).

¹⁰⁶ Based on the Art. 83 (a) of the Constitution the first round of the elections takes place on the “second Tuesday in October” which falls in the rainy season jeopardizing the logistics of elections.

¹⁰⁷ The NEC is benefitting from electoral technical assistance projects of the EU and USAID implemented by international organizations as United Nations Development Programme (UNDP) and the International Foundation for Electoral Systems (IFES) that provide support on legal aspects, communication, training, polling procedures, logistics as well as voter education and information.

¹⁰⁸ NEL 2.4.

¹⁰⁹ ICCPR Art. 2 (3)

¹¹⁰ Several “Regulations” decided on the basis of the regulatory power of NEC (secondary legislation) for example: “Voter Registration Regulation of August 12, 2016” were published with a delay on the NEC's website <http://www.necliberia.org/document.php?&a4705305cd27e04fb1f66830e7e0ef9d=Mg%3D%3D> (accessed on Jan 3).

timely publishing of the BoC decisions to provide the citizens with information on the “functioning and decision-making processes of its public administration”¹¹¹. Publication of the BoC qualified majority decisions on procurement, appointments and/or dismissal of Magistrates, budget, candidate registration, detailed election calendar and tally procedures would enhance the transparency of the process and could increase public confidence. During this electoral cycle and following the encouragement of the international community and national stakeholders, the NEC started to organize weekly press briefings¹¹², marking a positive approach to the right of access to information¹¹³. In most cases the briefings were accompanied by a release of “Press Briefing Notes”. The NEC also used social media to disseminate messages encouraging participation in the poll.

The shortcomings faced by the NEC signal a need for further institutional capacity development. Steps could be taken towards improving internal communication between the NEC HQ and the Magisterial Election Offices (MEOs). Importantly, developing capacity in record-keeping and access to documentation would increase the NEC's accountability¹¹⁴ and consequently strengthen the trust of election stakeholders in the NEC.

Operational aspects of the elections were led by the NEC Division of Administration (DA).¹¹⁵ The NEC DA works through the 19 MEOs which manage the elections in the 15 counties of Liberia¹¹⁶. While the EU EOM has assessed the MEOs as operating in an open and transparent manner, they often lacked necessary guidance from the NEC Headquarters. While the NEC DA developed an election operational calendar, some important deadlines were not met. These included the late arrival of the ballot papers for the October 10 elections and the elaboration of the tallying procedures¹¹⁷. Procurement of additional ballot papers as contingency caused disquiet among political parties, who did not feel informed that the number of these extra ballots was based on the maximum number of voters permitted per Polling Place (500) rather than on the actual number of registered voters¹¹⁸.

¹¹¹ See e.g., UNCAC Art. 10 (a).

¹¹² During the period of presence of the EU EOM in Liberia (September 1, 2017 – January 5, 2018) the NEC organized 21 press briefings.

¹¹³ ICCPR Art. 19 (2) and UN CCPR GC 34 p. 19

¹¹⁴ ACDEG Ch. 2 Art. 2

¹¹⁵ This included procurement of the election material, developing Election Day procedures, recruitment and training of the polling staff, logistical arrangements for the secure transport, storage of the sensitive election material as well as the organization of the return of the certified copies of the results and the tally.

¹¹⁶ There is a one MEO per County except for Bong, Lofa, Montserrado and Nimba that have two MEOs each.

¹¹⁷ For the first round of the Presidential elections ballot papers arrived in the country on 23 September, while the ballots for the House of Representatives arrived in two batches, on 29 September and 5 October. Tally and results transmission procedures for the MEOs were finalized only on 27 September.

¹¹⁸ Consequently, with 2,183,629 registered voters the NEC procured and deployed to MEOs 879,000 extra ballots. Regrettably, though requested, the NEC did not grant the EU EOM access to documentation confirming the accounts of the ballots received. Some accounts were published in the NEC Press Briefing Notes of 27 September 2017; however, these figures do not seem consistent with the fact that ballot papers were delivered in pads of 50.



The EU EOM assessed the cascaded trainings of the polling staff positively and they were well attended. However, EU EOM observers reported that the instructions transmitted to the trainees were not always coherent or updated¹¹⁹ which increased inconsistency of application of the procedures on Election Day. The recruitment of the polling staff was carried out professionally, but Queue Controllers, whose role emerged as vital to the conduct of the first round of the elections, were engaged from the lowest scoring candidates on the employment test¹²⁰. While an improvement was made for the rescheduled run-off, consideration should be given to appointing Queue Controllers as members of polling staff for future elections. The NEC “Polling and Counting Manual”, developed as the reference for the polling staff, could also be made more user-friendly¹²¹ to ensure ease of access and quick reference to clear instructions and guidelines during the polling days.

ELECTORAL SYSTEM

For the Presidential elections, Liberia uses a two-round-system, with the requirement of an absolute majority (50%+1) to be elected in the first round. In case no candidate obtains this result, the candidates with the two highest numbers of votes progress to the run-off in which a simple majority suffices to be elected. The House of Representatives elections are conducted in one-seat constituencies by a First-Past-The-Post (FPTP)¹²² system according to which the candidate with the simple majority of votes is elected in one round. Preceding the 2005 legislative polls, some electoral clauses of the Constitution were suspended, and the NEC established Electoral Districts (EDs) based on the number of registered voters¹²³. Ahead of the 2011 elections, both houses of the Legislature decided to increase the number of seats in the HoR from 64 to 73¹²⁴. Due to lack of political consensus, EDs were employed again instead of constituencies based on census data as required by the Constitution¹²⁵. This remained the case for the 2017 HoR elections.

¹¹⁹ This concerned in particular the changes to the voter identification procedure for the run-off, following the SC final ruling.

¹²⁰ As a part of the recruitment procedure, at the end of training, the candidates for the various positions of the polling staff were given a test, the results of which determined their assignment in the hierarchy of the Polling Place, with higher scorers being assigned as the Presiding Officers and the lowest scorers as the Queue Controllers.

¹²¹ While elaborated on 96 pages, the manual lacked, among other things, clear and easy-to-use instructions on voter identification and guidelines on packing of the election material after the closing of the polls.

¹²² First Past the Post or Single Member District Plurality (SMDP)

¹²³ “The Electoral Reform Law - An Act Suspending Certain Provisions of the Constitution of Liberia and Amending Specific Sections of the New Elections Law 1986 and Approving New Provisions Relating to the Budget Appropriation of the National Elections Commission” of 17 December 2004 (ERL). See also, NEC “Guidelines on the Establishment of Electoral Districts in Liberia” May 16, 2005.

¹²⁴ “Joint resolution LEG-002 (2010) of the Senate and the House of Representatives of the 52nd Legislature of the Republic of Liberia on the setting of an electoral threshold for the conduct of the 2011 Presidential and Legislative elections in Liberia” August 12, 2010 and subsequent “Statement on the Announcement of Final Electoral Districts for the 2011 Elections by Hon. James M. Fromayan, Chairman of the National Elections Commission (NEC) Friday, 8 July 2011 http://www.necliberia.org/pg_img/Electoral%20Districts%20Final%20Electora%20Districts.pdf .

¹²⁵ Reportedly, the reasoning behind not using the “constitutional” constituencies based on the population data from the recent at the time census was that some of the counties of the country would be underrepresented if 2008 census data was employed. This was perceived as contrary to the transitional ERL (Art. 4.3) that requires each of the



VOTER REGISTRATION

Liberia does not have a civil register. Voter registration is voluntary, active and periodic and takes place during each electoral cycle¹²⁶. Citizens of Liberia who were 18 years old at the time of registration could register to vote between 1 February to 14 March 2017 in their place of residence¹²⁷. After presenting evidence of Liberian citizenship and filling in an application form at the appropriate one of the 2080 Voter Registration Centers (VRC) voters received their Voter ID Card (VC)¹²⁸. The voters' application forms were subsequently scanned¹²⁹ and transferred to the centrally managed database. Following the registration period, the Provisional Registration Roll (PRR) was exhibited for voters to rectify their data or apply if omitted after which the Final Registration Roll (FRR) was compiled.¹³⁰

Throughout this process, the NEC faced major challenges, including the inadequate procurement of some of the material used in the VRCs¹³¹. Some of these deficiencies resulted in omissions or duplication of records on the FRR¹³² which later was used as an argument in favour of the parties challenging the results of the first round of the elections, leading to a suspension of the run-off. Additionally, the lack of synchronisation between scanning of the voters' application forms and the exhibition period (the latter started before the end of the former) caused some voters to possess a valid VC but not being part of the voter register thus their records were omitted from the FRR printout at their assigned Polling Places (PPs). Unfortunately, the NEC again did not systematically

Liberia's counties to be represented by not less than two seats in HoR which in turn reflects the spirit of the Accra Comprehensive Peace Agreement of August 18, 2003 that prescribed each of 15 counties of Liberia being represented by at least one seat in the National Transitional Legislative Assembly (NTLA).

¹²⁶ To register to vote, a citizen must have a will to do so, take an action, and do it within the indicated calendar period.

¹²⁷ While the NEL 3.1. requires that voters should register at the place of their "ordinary residence", in the absence of comprehensive and verifiable residence requirements, in addition to a weak system of personal identification, eligible voters could register at a location of their choice, subject to their ability to access the registration place.

¹²⁸ Statement of two registered voters or a confirmation of citizenship by a Liberian traditional leader were among allowed self-standing proofs granting the right to be register as a voter. EU EOM observers relayed reports of applicants being turned away because of their language which caused voter registration staff suspicion over the applicant's citizenship.

¹²⁹ For scanning an Optical Mark Recognition (OMR) technology was used.

¹³⁰ The exhibition period of the PRR took place between June 12-17, 2017. 2,183,629 voters were on the FRR for the first round of the elections, 49% of them were female and 51% male. There were 108,485 first-time-voters (18 years old) [is this figure only for 18 year olds or does it also cover 19 and 20 year olds too young to vote in 2014?]. This represents an overall increase in registrations of approximately 20 percent compared with the 2011 elections. Based on the SC final ruling the FRR was reviewed between the first and second round of the elections and for the run-off there were 2,183,268 voters on the FRR.

¹³¹ E.g.: cameras for capturing photos used for the Voter ID Card and application forms. Elaborated account of challenges of the 2017 Voter Registration process in Liberia can be found in the "Report of the ECOWAS Technical Support Team to the National Elections Commission (NEC) Liberia 26 November to 6 December 2017".

¹³² The serial numbers of the application forms were designed to serve as the VC serial numbers and due to the procurement issues the same serial numbers were used on multiple forms (for different voters) effectively causing this part of voters' records on the FRR to be duplicated (multiple voters featured on the FRR with the same VC number).

communicate statistical data on these duplications¹³³ and omissions. Consequently, this information, significant for the transparency and the independent scrutiny of the process,¹³⁴ is unknown.

For the first round, the NEC directed that the only requirement to cast the ballot was a valid VC with a serial number belonging to the sequence assigned to the Polling Place where the voter presented themselves¹³⁵. Additionally, the NEC communicated publicly that all voters with a valid VC will be allowed to vote irrespectively of whether all voters features on the FRR¹³⁶. This direction, which was intended to afford the opportunity to vote to persons with a valid card but having difficulty identifying their record on the FRR, seemed to arise as a result of imprecise provisions¹³⁷. The use of the VC, in the absence of an FRR at the PP, was also indicated in the Election Day procedures handbook, which allowed for SMS verification¹³⁸. This approach was modified by the SC ruling of 7 December, which required, as a precondition to voting in a rescheduled run-off, that the voter's record featured on the FRR printout at the Polling Place¹³⁹. The change of the approach between two rounds of the same election could have had the effect of impairing the right to vote in the rescheduled run-off for some of those who successfully voted in the first round¹⁴⁰. Furthermore, this SC condition, compounded with reduced voter awareness and a limited time¹⁴¹ for providing accurate information to electors, did not contribute to voters' turnout in the run-off¹⁴². In this context, the future voter registration arrangements would profit from more efficient safeguards of accuracy¹⁴³, enhancement of transparency by "putting in the public domain

¹³³ During the process of the LP complaint appeal hearing at the SC, the NEC commenced the review of the FRR which was later backed by an "ECOWAS Technical Team" deployed as a follow up to the "ECOWAS Report". Subsequently, 274 duplicated entries of voters were removed, and 420 new VC were produced for the voters sharing a VC number with other voters.

¹³⁴ UN CCPR GC 20 p. 20

¹³⁵ Constitution Art. 80 (c) - the voter has the right to "vote only in constituency where registered". NEL article 5.2 requires that the voter "shall vote only in the voting precinct of the electoral district" of registration. NEL Art. 3.1 states the voter "must vote at the polling place" of registration.

¹³⁶ Reported NEC press conference of June 14, 2017. While the NEC does not make the record of this event accessible, number of media reported on it e.g.: <http://allafrica.com/stories/201706190784.html> or <https://www.frontpageafricaonline.com/index.php/news/4454-all-registered-voters-will-vote-election-commission-chairman-assures>.

¹³⁷ NEC Regulations on Polling and Counting of May 6, 2016 Art. 3.1 and Art. 3.2, NEL, Art. 5.4 imply the use of an FRR.

¹³⁸ NECs Polling and Counting Manual p. 25 ("Exceptional Cases") instructs that voters in possession of a valid VC but omitted from the FRR can vote if their record is verified by the Presiding Officer (PO) by text message with the central database or by presenting two witnesses.

¹³⁹ Charles Walker Brumskine and Harrison S. Kamwea (1st Appellants) and Joseph Nyumah Boakai and Ors. (2nd Appellants) v. NEC, SC Majority Opinion, 7 December 2017.

¹⁴⁰ UN CCPR GC 31 p. 6

¹⁴¹ The time between the final SC ruling and the run-off was 19 days.

¹⁴² The voters' turnout, as communicated by the NEC, was 75.2 per cent in the first round of the elections on October 10 and 55.8 percent in the second round of the polls on December 26.

¹⁴³ UNGA Guidelines Concerning Personal Data Files art. 2 Persons responsible for the compilation of files or those responsible for keeping them have an obligation to conduct regular checks on the accuracy and relevance of the data

data of public interest”¹⁴⁴ and from procurement activities being conducted in line with Liberia’s ECOWAS commitments¹⁴⁵ and national public procurement legislation.

During the stay order period, an ECOWAS voter register expert Technical Team was sent to Liberia to provide technical assistance to the NEC. The Technical Team remained in Monrovia until the announcement of the final results and assisted the NEC in executing and accomplishing the requirements of the 6 November ruling of the Supreme Court, more specifically the parts of the ruling which referred to the “full clean-up” of the FRR. The ECOWAS Technical Team was instrumental to the NEC not only in providing technical assistance but also in enhancing the NEC’s credibility amongst the different election stakeholders including Liberian voters.

One of Liberia’s ECOWAS commitments is the establishment and maintenance of a civil register¹⁴⁶. A recently launched National Biometric Identification System (NBIS) maintained by the National Identification Registry (NIR)¹⁴⁷ is expected to be issuing national ID cards to Liberians. In order to use such a tool as a base for a potential passive voter registration, it is essential, among others, that the NBIS ensure an ongoing update of the data, including timely registration of deaths as well as geographical records that allow for the allocation of voters to electoral constituencies and later to Voting Precincts (VP). To implement NBIS, the NIR currently uses an external, private entity that provides both software and hardware used in the process of biometric registration of citizens. This arrangement would profit from further evaluation as to the independency and self-sufficiency of the NBIS ahead of engaging it in voter registration. It is worth noting that countries’ commitments for democratic elections extend to all their institutions¹⁴⁸ as well as create corresponding responsibilities¹⁴⁹ on private entities¹⁵⁰ which can be vital for data protection¹⁵¹. Additionally, the 19 MEOs, a permanent and decentralised structure, together with the recently opened County Service Centers of the Government of Liberia, could be considered as an asset in voter registration.

recorded and to ensure that they are kept as complete as possible in order to avoid errors of omission and that they are kept up to date regularly or when the information contained in a file is used, as long as they are being processed.

¹⁴⁴ UN CCPR GC p. 19

¹⁴⁵ ECOWAS Protocol on Fight Against Corruption (2011) art. 5 (b)

¹⁴⁶ 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 Art. 4 (1)

¹⁴⁷ The law describes NIR as an “autonomous entity within Executive Branch of the Government of Liberia” established by “An Act to Repeal PRC Decree #65 Establishing the National Identification Card System and Establish in Lieu Thereof the National Identification Registry” of August 1, 2011.

¹⁴⁸ Vienna Convention on the Law of Treaties Art. 27 and UN CCPR GC 31 p. 4

¹⁴⁹ UN CCPR GC 31 p. 8

¹⁵⁰ To implement NBIS, the NIR uses currently an external, private entity that provides both software and hardware used in the process of biometric registration of citizens. This arrangement would profit from further evaluation as to the independency and self-sufficiency of the NBIS ahead of engaging it in the voter registration.

¹⁵¹ ICCPR Art. 17 and UN GA Guidelines Concerning Personal Data Files Art. 3

VOTER EDUCATION AND INFORMATION

EU EOM observers reported that MEOs efficiently communicated to voters the date, hours and the locations of polling. However, the observers equally noted that the Civic and Voter Education materials were delivered to the counties with a delay and regrettably was not available in minority languages contrary to international commitments and standards¹⁵².

The NEC launched the official Civic and Voter Education (CVE) campaign on 18 August 2017, conducted by 436 civic educators and 219 gender mobilisers. The CVE campaign included door-to-door campaigning, community meetings, public debates and broadcasts in radio stations throughout the country (cf. Media and Human Rights).

The SC Stay Order, which was unprecedented for Liberia, forced the NEC to suspend all activities including their voter education and information undertakings as well as their weekly press briefings. This particular period unveiled the weaknesses of some parts of the legal framework that governed these elections (cf. Legal section) and also showed the lack of capacity of the different institutions in providing citizens with accurate and timely information on the current state of affairs, which is a key element to enhance voters' trust in the process.

Given the high level of illiteracy in Liberia, interlocutors from CSOs, academia and the NEC stressed that civic education should take on a larger role and take place between election periods, instead of being conducted together with voter information largely in the months before an election. Several lamented that CVE was not anymore part of the school curriculum and some went as far as demanding the creation of a Civic and Voter Education Institute, amongst others, due to the high number of invalid ballots in the HoR elections. As stressed by CSOs, especially by Disabled People's Organisations' (DPOs), CVE ought to start several months before elections to be able to conduct information campaigns in all the counties.

IX. ELECTION CAMPAIGN

CAMPAIGN ENVIRONMENT

Campaigning remained predominantly calm with the exception of a few isolated incidents of violence and sporadic cases of defacing of campaign material.

The official campaign period for the 10 October ballot started on 31 July 2017. EU EOM observers described the atmosphere of political rallies as predominantly enthusiastic, with only a few instances of inflammatory language reported. Large events outside Monrovia concentrated around the presidential candidates' campaign trail and canvassing revolved, to a large extent, around candidates' personalities.

EU EOM observers reported that tribal sentiments punctuated campaign rhetoric with several candidates underlining their indigenous background, and some choosing to emphasise the

¹⁵² "Recommendations of the second session of the Forum on Minority Issues on minorities and effective political participation" (A/HRC/13/25) p. 19 which reflect the ICCPR Art. 27 and the UN CCPR GC 25 p. 12.

difference between ‘natives’ and ‘Americo-Liberians’. As some tensions became apparent, the NEC took advantage of an IPCC meeting to warn political parties against an “irresponsible” resort to divisive rhetoric¹⁵³.

Furthermore, the campaign environment was not favourable to advocacy for issues associated with the LGTBI community, and open candidacies by members of this group. In the early phase of the campaign period for the 10 October election, homosexuality and gay marriage were negatively debated. Over time, the topic took on a lower profile, to re-appear shortly before the rescheduled run-off¹⁵⁴. For both Election Days, there were no reports of incidents of LGTBI-related hate speech or discrimination of voters.

The absence of standardised procedures for political parties to submit a campaign calendar, together with a lack of clear legal provisions for the approval and co-ordination of rallies, resulted in a practise of ‘first-come, first-served’ that hindered an equitable distribution of opportunities to campaign, particularly for larger events. Moreover, it deepened a perceived discrimination in favour of the incumbent in the allotment of dates and space for campaign activities.

In at least three instances, the proximity of rival supporters led to violent clashes, which became a source of concern for stakeholders and national authorities¹⁵⁵. At a rather late stage, the Liberia National Police (LNP) sought the cooperation of political parties and requested they refrain from scheduling large political gatherings in the capital beyond 4 October to allow for timely deployment of an understaffed police to polling centers across the country. However, political parties declined to willingly shorten the campaign period and, as permitted by the electoral law, major closing rallies were held in Monrovia up to 8 October. Although the deployment of police personnel to the counties resulted in the scarcity of security forces in the capital during the last days of campaigning, no major incidents were reported.

Regulations for the scheduling of campaign events were dispersed across different legal instruments. Where a major campaign event was scheduled, political parties were required to notify the LNP and the Ministry of Justice. In addition, the NEC requested advance campaign calendars with a view to facilitate the coordination of the parties’ respective rallies. Despite the absence of legal provisions supporting the NEC’s demand, several candidates and political parties submitted a schedule of their planned activities in order to avoid the holding of conflicting events. At county level, a variety of differing practices were observed. Depending on the political party and the location to be used, local authorities (e.g. County Superintendents, district commissioners, etc.), County Attorneys and/or Magisterial Electoral Offices were informed by the concerned candidates.

During the first days of the second campaign period starting on 12 December, the EU EOM observed low-key canvassing activities across the country, mainly focusing on door-to-door

¹⁵³ IPCC meeting held on 18 September.

¹⁵⁴ William Kpadeh (Independent), Dr. Joseph Mills Jones (MOVEE), Simeon Freeman (MPC), MacDonald Wenton (UPP), Yardpajuwur N. Mator (Independent), Isa Gbombadee Wiles (DJP), Jeremiah Whapoe, (VLP), Oscar Cooper (Independent), Presidential candidate debate of 9 September 2017; Henry Fahnbulleh, *The Inquirer*, 5 October 2017; Joseph Boakai, *FrontPage*, 19 December 2017.

¹⁵⁵ For instance, there was a widely reported clash between Liberty Party (LP) and Coalition for Democratic Change (CDC) supporters in Sanniquellie, Nimba County, on 20 September. At least two other cases of election related violence involving supporters of different political parties occurred in the lead-up to the 10 October ballot (CDC vs. UP in Montserrado, UP vs. independent candidate supporters in Margibi).



campaign and community meetings. Parties could freely exercise their rights to freedom of expression, assembly and movement, and the atmosphere of the campaign was mainly described positively, with gatherings punctuated by the distribution of gifts. EU EOM observers reported, however, a few instances of aggressive rhetoric at times drawing near to inflammatory speech.

The two political parties engaged in canvassing activities enjoyed more space and a greater flexibility in the organisation of their events than during the first round. However, frequent impromptu adjustments of campaign calendars resulted in a degree of uncertainty, which implied an *ad hoc* co-ordination of rallies with a potential for conflicting activities.

Campaigning intensified closer to Election Day, with some major events organised in counties with a large number of registered voters. Public meetings were frequently the occasion for defeated candidates and parties to declare their support to either of the presidential tickets. The official endorsements and abstentions announced by high-profile political leaders often revealed diverging positions within the same party. EU EOM observers also noted several instances of local candidates actively campaigning for a presidential ticket different from the one backed by their respective national standard-bearer, thus shaping a campaign where personality-based choices dominated over party affiliation.

PARTY AGENTS

Party agents were present in all Polling Places visited by EU EOM observers on both Election Days. Notwithstanding the equal number of identification tags distributed by the NEC to all 26 political parties contending in the first round, only five parties deployed sufficient poll watchers to cover at least half of the Polling Places observed¹⁵⁶. Despite the parties' investment in the recruitment and training of party agents¹⁵⁷, the distribution of party representatives during Election Day indicates that they were mainly tasked with collecting results sheets rather than observing all the stages of the election process¹⁵⁸. This was confirmed by EU EOM observers who reported party agents' overall low understanding of election procedures.

In a positive development, the EU EOM observed how both parties participating in the run-off built on their experience during the first round of elections to improve the training of their agents. In line with the SC's Opinion, underlining the need for complaints to be sufficiently substantiated

¹⁵⁶ During the first round of voting, CDC agents were seen in 97 per cent of the Polling Places visited, closely followed by UP poll watchers observed in 95 per cent of cases. LP, ANC and ALP representatives were seen covering respectively 91, 82 and 78 per cent of the Polling Places observed. Agents of other political parties were present in less than half of the Polling Places visited by the EU EOM, if at all.

¹⁵⁷ All 26 political parties contending in the 10 October election initially benefited from a training provided by the National Democratic Institute (NDI) in cooperation with the NEC. Each party was entitled to enroll ten "master trainers" (i.e. trainers of trainers), who subsequently trained their respective poll watchers following a cascade system.

¹⁵⁸ The number of party representatives increased nearer to counting and closing procedures, whereas it dropped significantly during tallying activities. During opening procedures, UP, CDC, LP, ANC and ALP agents were present in respectively 94, 89, 74, 74 and 69 per cent of the Polling Places observed. During counting and closing, the figures increased to 100 per cent for representatives of the UP, the CDC and the LP representatives, 91 for the ANC, and 84 per cent for the ALP. During tabulation of results, CDC poll watchers were seen in 81 per cent of the Tally Centers visited, UP in 72 per cent, whereas LP, ALP and ANC representatives were observed in only 50, 44 and 33 per cent of the cases.

by concrete evidences, refresher courses provided to party agents before the second round included guidelines on election offences and submission of complaints at Polling Place level. Whereas the EU EOM observed that the deployment of party agents was systematic and better organised, the gathering of results sheets appeared to remain their focus of attention, as attested by the high-standard situation rooms both the CDC and the UP established with a view to conduct a parallel tabulation of results. Although such a parallel count may greatly contribute to the transparency of the electoral process, selective focus on records of count could inhibit poll watchers from gathering other potentially crucial information, notably in the event of disputes arising from the election process.

X. POLITICAL FINANCE

The current implementation of campaign and political party finance regulations was insufficient to guarantee equality, transparency and accountability of the election process.

While the legal framework offers a comprehensive set of rules, its application was undermined by the contestants' low level of compliance with reporting obligations and a lack of enforcement by the oversight institution - the NEC.

Where financial statements were submitted, they mostly reflected a *pro-forma* compliance and were accepted by the monitoring body without due examination. Under such circumstances, smaller parties and independent candidates expressed concerns about the level of spending of wealthy frontrunners, limited *de jure* but unlimited in practice. This is perceived as particularly important in a country where the divide between the wealthy and the less well-off sections of society has historical roots.

To address these shortcomings, future improvements will need to focus on (i) developing sufficient capacity and expertise within the monitoring body to conduct an effective oversight and (ii) strengthening co-operation with relevant public and private institutions that can provide the NEC with necessary data to assess the veracity of submitted reports.

QUALITY OF LEGAL FRAMEWORK

In line with international standards for campaign financing¹⁵⁹, the legal framework covers all core pillars of campaign finance architecture. Alongside the sources of campaign funding and the spending limits¹⁶⁰, the framework regulates the reporting and disclosure requirements for contestants and foresees a system of sanctions and enforcement mechanisms. Instances of vote-

¹⁵⁹ ICCPR, art. 25, General Comment 25, para. 19; UNCAC, art. 7(3); African Union Convention on Preventing and Combating Corruption, art. 10.

¹⁶⁰ Contributions are limited to 100,000 USD per donor, with a ban on foreign or anonymous sources as well as donations from businesses and labour unions. The budget for presidential and vice-presidential candidates was limited to 2,000,000 USD and 1,000,000 USD respectively, while the House of Representatives aspirants could spend a maximum of 400,000 USD.



buying, misuse of state resources and abuse of position are punishable by law as election offences.¹⁶¹

In the past years, the regulations benefitted from a substantial review that helped remove some of the most cumbersome requirements imposed on contestants¹⁶² and cover some formerly unregulated areas (e.g. use of state resources and abuse of position). As a result, the current framework generally presents realistic and enforceable measures and sanctions. However, the latter have not been applied systematically, signalling to contestants that non-compliance is unlikely to be punished. This contributed to undermining equal opportunities among contestants and the transparency of the election process.

CURRENT LEVEL OF IMPLEMENTATION

Contestants are bound to submit to the NEC financial statements on two separate occasions: during the candidate nomination process and, again, 15 days after the announcement of the results¹⁶³. The pre-election reporting was fully enforced by the NEC as the submission of financial statements was a requisite for becoming a candidate. However, the second reporting deadline was met by a low level of compliance and, even worse, by no enforcement because the NEC lacked the necessary capacity and expertise. Following the first round of elections, only some 16 out of 1,022 candidates (below 2 per cent) provided the requested accounts¹⁶⁴. Although having the mandate to apply penalties in case of non-submission of financial statements, the NEC has not imposed any sanctions¹⁶⁵. In addition, it failed to make the reports available for public consultation within 30 days of the election as demanded by the law. Yet, both reporting and disclosure are key to ensure the transparency of the process.

The financial reporting by political parties has faced similar implementation issues. Subject to an annual reporting deadline on 1 September¹⁶⁶, only 12 out of 26 political parties submitted the documentation in time, while 8 parties failed to comply with this requirement altogether¹⁶⁷. The NEC considered a range of sanctions, including party de-registration, a precedent established in

¹⁶¹ NEL, art. 10.4, 10.2A; Code of conduct, Part V.

¹⁶² For instance, the number of reporting deadlines and forms was significantly reduced without compromising the required detail of information. House of Representatives candidates no longer need to keep a campaign specific bank account. Campaign committees responsible for the book-keeping were replaced with an individual treasurer.

¹⁶³ For the post-election reporting, contestants submit both accounts of campaign contributions and expenditures and statements of assets and liabilities. For the pre-election deadline only, the latter financial reports are required. All House of Representatives candidates and those presidential/vice-presidential candidates who did not qualify for the second round were expected to submit reports by 3 November 2017 while the participants to the run-off had to report by 10 January 2018.

¹⁶⁴ The EU EOM observation did not cover the financial reporting related to the run-off, due on 10 January 2018.

¹⁶⁵ Non-submission of financial statements is an election offence “subject to a fine and/or the withholding of certificate to take seat until the requirement is fulfilled, or banning a candidate from participation in subsequent general elections”, NEC Campaign Finance Regulations 2016, art. 20.2. Yet, no sanctions were applied until the mission’s departure on 10 January 2018.

¹⁶⁶ Political parties submit statements of assets and liabilities as well as accounts of contributions and expenditures for the period of the past 12 months.

¹⁶⁷ The remaining six parties either did not submit the statements on time or their documentation was incomplete.

recent years¹⁶⁸, but none were eventually applied. However, to create a predictable environment and increase the efficiency of enforcement, sanctions need to be applied in a consistent manner.

Prior to the issuance of the Stay Order, the NEC reported being in the process of recruiting an independent and neutral accounting firm to audit financial statements submitted both before and after Election Day. The audit, long foreseen in the law, would have been a premiere for the country and was viewed as a possible step forward to a more efficient implementation of the regulations. Yet, the postponement of the run-off also put a halt on the organisation of the audit, hampering a crucial step of campaign finance oversight. At the time of publication of this report, the EU EOM was not aware of any official communication by the NEC reaffirming this commitment.

In circumstances where financial reports have historically not been audited and sanctions seldom applied, most contestants demonstrated limited interest in complying with the regulations. At times, they also lacked the basic information and understanding. Although reported on standard NEC forms, the level of detail and information provided by the contestants varied greatly, making any comparison or cross-checking of data unfeasible. Moreover, many political actors conveyed to the EU EOM the intention to submit *pro-forma* reports not reflecting the real flows of funds.

While insufficient enforcement constitutes one of the major challenges, it is important to acknowledge that the NEC currently lacks the capacity, resources and expertise for implementing the regulations and providing information and trainings to a large pool of contestants. The oversight of campaign and political party finance appears as a shared responsibility among three separate departments: Political Affairs, Legal and Compliance. Being far from their core focus, this aspect of the election process has received little attention.

If the oversight function remains within the NEC, establishing an appropriately resourced department on campaign and political party finance would be key to increase the efficiency of enforcement. Together with a systematic verification of submitted accounts and, where appropriate, application of sanctions, the department should continue to raise awareness and communicate regularly with political actors. The new unit would also benefit from developing long-term capacity development and, as well as experience-sharing with international experts and peers.

To further develop its capacity for checking submitted financial reports against relevant data and documents, the NEC could establish or strengthen its co-operation and information-sharing with relevant public and private institutions, such as the Liberia Revenue Authority, Ministry of Justice, Liberia Anti-Corruption Commission, Financial Intelligence Unit and private banks. They could provide the NEC with necessary information about cases of illicit funding, bank transfers etc. from tax or money-laundering databases that have an international outreach thanks to ongoing co-operation with ECOWAS and OECD¹⁶⁹. Such partnership should be established without prejudice to the NEC's mandate for campaign finance oversight as determined by law.

The EU EOM's direct observation showed a high level of monetisation of the campaign, where a culture of in-kind and financial hand-outs and services to communities prevailed. Most interlocutors confirmed that, in order to satisfy voters' expectations, such practices start taking

¹⁶⁸ On July 2014, the SC relying on Chapter 7, Para. 5A.3 of the NEL upheld a Civil Court ruling de-registering political parties on the ground of failing to submit the required financial statements.

¹⁶⁹ Organisation for Economic Co-operation and Development.

place not months but years ahead of the official campaign and are not accounted for. Cases of misuse of state resources and abuse of position are equally common¹⁷⁰. While the law prohibits such practices, instances of the same are difficult to track and sanction as aggrieved parties rarely file official complaints. Yet, such cases undermine the equality of opportunity among contestants. To level the playing field, the oversight institution should take a proactive approach in the prevention, monitoring and sanctioning of these practices.

XI. HUMAN RIGHTS

HUMAN RIGHTS LEGAL FRAMEWORK

Framework largely in line with international standards, however with implementation gaps.

Liberia has succeeded in bringing its legislative framework to large degree in line with international human rights standards relevant to elections¹⁷¹. However, the advances are met by capacity and implementation gaps.

The Liberian Constitution enshrines most basic, fundamental rights and freedoms, including rights of association, freedom of expression, movement and assembly. The Independent National Commission on Human Rights (INCHR), established in 2005, effective since 2010, is responsible for the promotion and protection of human rights¹⁷².

Some legal provisions impact on the right to vote and candidacy for political office, such as the prohibition of dual citizenship, income and property related requirements, which exclude poor and economically inactive persons, particularly women and young people. Pre-trial detainees, and other detainees allowed to vote by law, could not vote in the 2017 elections, as the NEC did not set up logistics in detention centres¹⁷³.

¹⁷⁰ The EU EOM has observed campaign involvement of ministers (Nimba), Superintendents and their offices (Lofa, Bong, Nimba, Grand Bassa), Assistant Superintendent (Bomi), city or district mayors (Lofa, Bong, Nimba, Grand Kru, Grand Bassa), officials of the County Attorney office and the Gbarnga City Corporation (Bong), a district commissioner (Lofa) as well as members of the Elders Council (Nimba). The EU EOM has also observed seven instances where the incumbent engaged in misuse of state resources (Montserrado, Lofa, Bomi, Bong, Nimba).

¹⁷¹ International treaties binding for Liberia include the ICCPR, ICERD, CEDAW, CPRD, UNCAC, CPRW and ICRMW, with regional and sub-regional instruments including the ACHPR, ACHRPR-PW, AUCPCC, ACDEG, ECOWAS PDGG.

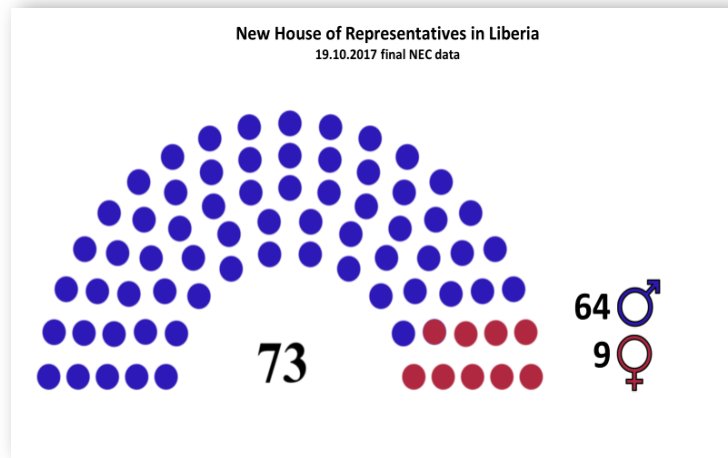
¹⁷² The INHRC investigates and reports on respect for human rights, complaints on human rights violations, propose reforms to laws, policies, administrative procedures and advise the government on the implementation of national and international human rights standards (cf. International and Regional Legal Framework). The INCHRINHRC has human rights monitors in all counties, who liaise with local authorities, CSOs and communities. Further, the INCHRINHRC is mandated to follow the implementation of the Truth and Reconciliation Commission's recommendations, a process which is still to begin. Cf. <http://inchriliberia.com/>.

¹⁷³ Logistics for voter registration and polls in detention centres have not been set up by the NEC for these elections. Estimations of authorities on the number of persons affected range between 2,500 and 3,000 persons. The introduction of mobile voter registration and the re-introduction of absentee voting, provided for in the Constitution, could facilitate the right to vote for this group.

PARTICIPATION OF WOMEN

Absence of enforceable quota and late support resulted in few women elected.

Despite having been the first country in Africa to elect a female head of state into office in 2005, re-elected in 2011, there is a wide gender gap in Liberia, which is also visible in access to positions of political representation and decision-making¹⁷⁴ for women: while 40 per cent of the justices at the SC and of the NEC BoC are women, under 6 per cent of local government leadership positions are held by females¹⁷⁵. Women constitute 49 per cent of registered voters, but accounted for only 15.9 per cent of the total number of candidates in the elections, with only one female presidential



candidate and 156 women out of 828 HoR candidates. Nine women (12.3 per cent) were elected in the new HoR. Counting the additional female representative elected in a 2015 by-election¹⁷⁶, bringing the number of female representatives in the previous legislature to nine, the number of women in the HoR remains the same - and still far below the thirty per cent target¹⁷⁷.

Incumbent women representatives did well in the elections: of all of the nine running again in the HoR elections, five were re-elected. On

the other hand, there are only four new female representatives.

Interlocutors reported as main factors contributing to this low political representation: (i) conservative socio-cultural ideas on women's role in society, compounded by high poverty, low education and literacy rates affecting women disproportionately; (ii) a disunified women's movement, neglect of links between elected and female electorate over the past years; (iii) low priority given to women's participation in decision-making, reflected also in a weak integration of

¹⁷⁴ The Liberian domestic constitutional and legal framework affirms equality of men and women. Liberia is party to the main international instruments to this aim, including CEDAW, the ECOWAS Protocol on Democracy and Good Governance, the African Peoples' and Human Rights Declaration, and the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa.

¹⁷⁵ Only 21 per cent of cabinet ministers in the previous government were females. The number of women in the cabinet of the new government, however, so far is even lower with only two female ministers (for the areas of Gender and Health) nominated, corresponding to less than 12 per cent. Cf. Gbatemah, Senah: Women's Appointment in Weah's Cabinet Less than 12 Percent. The Bush Chicken, 08.03.2018, <http://www.bushchicken.com/womens-appointment-in-weahs-cabinet-under-12-percent>.

¹⁷⁶ Julie Fatoma Wiah, Independent, ED 2, Lofa.

¹⁷⁷ Beijing Declaration and Platform of Action.

women in political parties; (iv) negative perception towards provisions for positive gender discrimination, contributing to efforts for special legislative seats failing so far¹⁷⁸.

While the NEC¹⁷⁹ has taken the positive step to establish a Gender Office and adopted a Gender Policy, the process of mainstreaming gender into the electoral process is still in its infancy: A NEL provision for political parties to “endeavour to ensure” to have a minimum of 30 per cent of each gender in their governing bodies and their candidate lists¹⁸⁰ proved not to be a sufficiently effective measure for ensuring women’s political representation, in the absence of any enabling mechanism. While NEC’s Candidate Nomination Regulations do not even mention the NEL provision¹⁸¹, months before the election the NEC tried to engage with political parties to have them comply with the provision. This resulted in a higher number of female candidates. However, this rather late initiative led to parties searching for women candidates shortly before the nomination deadline for the sake of getting near the 30 per cent requirement¹⁸²; only one, the Liberia Restoration Party, met the 30 per cent requirement for the nomination of candidates for the HoR election.

Similarly, capacity building programs for women candidates, offered mainly by CSOs, started late, due to late donor support, and had little impact in the elections¹⁸³. Hereby, the importance of having a track record, and being known in the constituency, to stand a chance in the elections in Liberia, was neglected. Training offers were insufficiently coordinated with political parties, with women trained often lacking previous contacts and experience with such. In this regard, also selection processes for primaries of political parties were often viewed as intransparent by women aspirants, of whom many are at a financial disadvantage compared to male competitors able to bring in more resources. Many women aspirants and candidates were not prepared for the process, both in terms of technical skills, outreach to their constituency and lacking funds to even pay the registration fees. Interlocutors stressed timely support to be key for building a platform, raising funds and other preparation of the campaign. Further, material support, at least in terms of Civic and Voter

¹⁷⁸ Information, plans and strategies for improvements are far from new, but lack implementation. Cf. e.g. Sam, Bernice/Cooper, Etweda: Analysis of women’s political participation and Integration of a Gender Perspective in the 2011 Electoral Process in Liberia. 2011. In October 2017 an Affirmative Action Draft Bill with a reduced number of seats (from 21 to 7), after having passed the senate, following a motion to reconsider, was rejected in the HoR based on legal and technical concerns. A 2016 NEC Legal Opinion on the Draft Bill pointed out that the foreseen procedure of electing the special seat representatives in “special regional convocations“ of beneficiary groups may contradict the constitutional principle of “one person, one vote“ and legal definitions of constituencies, and would lack technical specifications and a budget provision. Latter justified concerns and need for improvements notwithstanding, interlocutors reported efforts for affirmative action legislation to be on-going since 2008, with a Gender Equity Bill brought in for the first time in May 2010 (cf. Library of Congress: Global Legal Monitor: Liberia: Proposal to Increase Women’s Participation in Politics, 7.6.2010, <http://www.loc.gov/law/foreign-news/article/liberia-proposal-to-increase-womens-participation-in-politics/>).

¹⁷⁹ As of June 2017, of NEC’s 300 full-time staffs only 20 per cent were females, with the proportion of females highest in the BoC (43 per cent), strongly declining at the levels of Assistant Magistrates, technical and other staffs, senior management, and Magistrates at county level, with 5 to 21 per cent. Cf. NEC Human Resource in Warioba, Christine: Gender Analysis of the NEC and Electoral Process. UNDP Election Project, June 2017, p.12-13.

¹⁸⁰ NEL, 4.5.

¹⁸¹ NEC: Candidate Nomination Regulations, May 6, 2016.

¹⁸² These elections had the highest number of women candidates so far (163 in total, including 156 for the HoR), yet only nine females were elected to the HoR (5.8 per cent of the women candidates).

¹⁸³ Some trainings took place still during the campaign, distracting women candidates from running the campaigns.

Education materials was seen as important by interlocutors, due to the lack of funds among most female candidates and as giving financial support for campaigns is not possible for donors¹⁸⁴. In sum, with plans and strategies for women's political empowerment implemented so shortly before the elections, and with little commitment from political parties themselves, many of the efforts were rendered inefficient.

For mobilizing women voters, also in rural areas with difficult access, 219 gender mobilizers were hired by the NEC for targeted Civic and Voter Education. Due to lack of funding and the short time-frame these were however only used to very limited extent in the time leading up to the 26 December election. In parallel, several CSOs were contracted by UNDP and IFES for CVE, with only a few organisations having a purely gender focus, which led to complaints among key women's CSOs.

According to the EU EOM observations, Polling Places (PP) in more than 90 per cent of cases had female polling staff, although the proportion of women among the total number of polling staff decreased from 35 per cent in the 10 October election to 30.4 per cent in the election of 26 December. In the latter, 64 per cent of PPs had two or more females among the polling staff, 29.1 per cent having three and more, and in 16 per cent the Presiding Officers were women. The proportion of female party agents in the 10 October election ranged between 26.1 and 7.4 per cent¹⁸⁵ and decreased to between 17.4 and 10.7 per cent among the two main contenders in the 26 December election.

PARTICIPATION OF YOUTH

Focus on youth in peace promotion, late training resulted in few young people elected.

Youth population¹⁸⁶ in Liberia is estimated at 65 per cent. In view of the high number of first time voters, this generally marginalised group was strongly targeted in Civic and Voter Education, as well as peace promotion and conflict mitigation activities by several CSOs, with some coming from women's organisation, from education-focused, or youth organisations¹⁸⁷. For the first election round there was a stronger overlap with programs for women. In the process leading up to the run-off, several organisations shifted to peace promotion with the main target group becoming youth. Amongst other actions, the party youth leaders from all political parties came together on 11 December to sign a Youth Peace Declaration, a follow up to the Farmington River Declaration, and committed to peaceful conduct in the elections. At the end of the event, the party

¹⁸⁴ As funding for campaigns of female candidates was provided by the Ministry of Gender, Children and Social Protection in 2011, some women candidates expected support and indebted themselves to run their campaign.

¹⁸⁵ For the 10 October election, the proportion of females among the party agents was: CDC 21.1 per cent, UP 26.1 per cent, Others 7.4 per cent, ANC 26.1 per cent, ALP 24.3 per cent, LP 19 per cent, and MOVEE 10.4 per cent. For the 26 December election, the main contenders' party agents had the following female proportion: CDC 10.7 per cent and UP 17.4 per cent, as well as Others with 1.2 per cent females.

¹⁸⁶ In Liberia the category of youth is defined as comprising persons between the age of 15 and 35 years.

¹⁸⁷ For instance, NAYMOTE -Partners for Democratic Development, Federation of Liberian Youth (FLY), West Africa Network for Peace Building (WANEP) and Women's Peace Network (WIPNET), Messengers of Peace Liberia, Catholic Commission for Justice and Peace, Mano River Women's Peace Network, Hope for Liberia, Better Future Foundation, Angie Brooks International Center/Women's Situation Room.

youth leaders underlined that this was the first opportunity where youth were effectively given a role in decision-making in the country.

Similar to programs targeting women, leadership training offers for youth also came rather late. Having shown an effect in terms of helping several trainees afterwards to promotions inside the structures of political parties and civic groups, few were successful already in these elections¹⁸⁸. The emphasis on youth in peace promotion activities, according to interlocutors from youth organisations, has been instrumental in maintaining the peace in these elections, and supporting a positive vision for youth. The influence of youth in decision-making is still seen as rather weak, interpreted from the slow response of political parties to the Youth Manifesto and in integrating the priorities of youths into their platforms.

PARTICIPATION OF MINORITIES

Ethnic constitutionally limited citizenship, some incidents of discrimination and negative statements against Muslim minority.

Due to the ethnic, constitutionally limited definition of citizenship, members of the long-established Lebanese and Indian minorities are excluded from political participation and representation¹⁸⁹.

Although the Constitution prohibits religion-based discrimination, the Muslim minority, especially the Mandingo ethnic group¹⁹⁰, faces a degree of discrimination in Liberia. A number of such initial cases of discrimination of Muslims in voter registration were solved by mediation of the Inter-Religious Council (IRC). EU EOM observers witnessed some negative statements directed at members of the Islamic minority, especially Mandingos, at campaign events for the HoR election. Repeated attempts at staging endorsements of the Muslim community for candidates were reacted to with declarations on the impartiality of the Muslim community by the IRC and the National Muslim Council, demonstrating awareness of the importance of safeguarding constitutional provisions on the freedom of religion and non-discrimination and avoiding politicisation of inter-religious relations.¹⁹¹

Members of the Muslim minority community took active part in the electoral process, as candidates to the HoR, in Civic and Voter Education, peace promotion, as well as in domestic observation in counties with the highest proportion of Muslim population. Of several Muslim

¹⁸⁸ Of 135 youths trained in NAYMOTE's Young Political Leadership School, three were elected to the HoR.

¹⁸⁹ Constitution, Chapter IV, Art. 27; Degleh, Emmanuel: Liberian-born Lebanese Wants Citizenship Law Revised. In: Bushchicken, 14.09.2017, <http://www.bushchicken.com/liberian-born-lebanese-wants-citizenship-law-revisited/>

¹⁹⁰ The Muslim community represents 12.2 per cent of the population, including 3.2 per cent from the Mandingo ethnic group (Census 2008). Cf. Liberian Observer: Christian state, a threat to Muslim existence. <https://www.liberianobserver.com/news/christian-state-a-threat-to-muslim-existence/> 20.05.2017.

¹⁹¹ In the campaign for the October 10 election presidential candidate Benoni Urey, in the campaign for the rescheduled run-off an informal Muslim group for presidential candidate George Manneh Weah. Cf. Tweh, Augustine: Liberia: National Muslim Heritage Foundation Endorses Joe Boakai Candidacy, 4.7.2017, <http://allafrica.com/stories/201707040776.html>; The Liberian Observer: Hundreds of Muslims endorse Weah, 11.12.2017, <https://www.liberianobserver.com/news/hundreds-of-muslims-endorse-weah/>



candidates, two women were elected to the HoR. There were no reports of religious-based discrimination of voters from the Islamic minority in the 10 October and 26 December elections.

PARTICIPATION OF PERSONS WITH DISABILITIES

Relocation of Polling Places, Tactile Ballot Sleeves provided, but room for more improvements.

Although Liberia has ratified the Convention on the Rights of Persons with Disabilities in 2012, persons living with disabilities (PwD), given the post-conflict and poverty context, are still a strongly disadvantaged group. PwDs are estimated to amount to more than 16 per cent of the population by the National Union of Organisations of the Disabled (NUOD). Amongst other challenges, accessibility of public buildings outside urban areas is still very limited for PwDs, aggravated by the poor state of infrastructure in the country¹⁹². To facilitate electoral participation of PwDs, the NEC put several procedures in place - relocation of PPs, preferential treatment, allowing visually impaired voters to request assistance, tactile ballot sleeves (TBS), and targeted Civic and Voter Education. However, for the October 10 election, delays in procuring the TBS, caused by late securing of funding, impacted training of polling staffs on their utilisation, as well as Disabled People's Organisations' (DPOs) timely delivery of cascade training and voter mobilisation. Together with errors in the packaging with other election material, this caused TBS' unequal utilisation on Election Day. DPO- and CSO interlocutors commented that long queues, overcrowding outside of PPs and late voting were not beneficial to PwDs due to their reduced mobility. On a positive note, one woman with disability was elected to the HoR in this election.

For the 26 December election, TBS were present in all but two PPs observed by EU EOM observers. EU EOM observers assessed 70.1 per cent of PPs as accessible and 75.2 per cent of PPs having a suitable layout for voters with reduced mobility. While polling staff were trained on the utilisation of TBS, the short time-frame and low resources available resulted in very little specific Civic and Voter Education. DPOs made efforts to engage the NEC on further improvements in accessibility of PPs and preferential treatment shortly after the announcement of the date of the rescheduled run-off, yet received little response¹⁹³.

In comparison, according to the EU EOM Election Day observations of 10 October and 26 December, there was improvement in the provision of the TBS, while accessibility and layout of PPs remained approximately the same. Thus, there is room for further strengthening the access to the right to vote for PwDs through measures such as regular re-assessments of PPs followed by relocations or building of ramps where needed, as well as noting reduced mobility in voter registration and attributing such voters to accessible PPs. Considering cultural factors including

¹⁹² According to the last census of 2008 PwDs were said to be three per cent of the population, DPOs see this number as far too low and due to poor training of census staff neglecting that many families in Liberia hide PwDs in the homes; as noted in the EU EOM observations this aspect goes beyond the accessibility of PPs, involving also their surroundings. NUOD's 2017 shadow report to the Committee on the Rights of Persons with Disabilities comments that buildings with ramps for facilitating accessibility constitute less than one per cent of public buildings outside of urban areas in Liberia. Cf. NUOD: Submission on the Implementation of the Convention on the Rights of Persons with Disabilities in Liberia (July 2012 – July 2017). NUOD, August 2017, p.5.

¹⁹³ Letter of 11 December 2017 by the Alliance on Disability to the NEC.

still occurring incidents of families hiding PwD in homes and cases of persons not able to come to Polling Places at all, mobile voter registration and the reintroduction of the absentee ballot could be additional beneficial measures.

As a key NEC interlocutor stressed, TBS should be consistently provided in elections to familiarise polling staff and voters with them. To reach a larger impact and as TBS can also serve illiterate persons¹⁹⁴, Civic and Voter Education on TBS and their utilisation could be mainstreamed into general CVE of NEC temporary staff, including PwDs. If necessary, some separate workshops implemented with or through DPOs could complement the general CVE with specific issues about voters with disabilities¹⁹⁵.

XII. MEDIA AND ELECTIONS

MEDIA ENVIRONMENT

Freedom of speech in the media was broadly respected during both campaign periods, for the 10 October Presidential and HoR elections and for the rescheduled run-off¹⁹⁶.

While isolated incidents of attacks against journalists by alleged partisans were seen by stakeholders as an attempt to frighten and force the press into self-censorship, it did not appear to have an impact on the generally free media environment. Following the events, the Press Union of Liberia (PUL) made a statement in defence of the right to speech, called on authorities of the Liberia National Police to expeditiously investigate one of the cases and addressed the media, calling on journalists to adhere to the Code of Ethics for Liberian Journalists¹⁹⁷. PUL reiterated the latter appeal to the media on Election Day.

Radio is the primary source of information for most Liberians and television is the least used and developed. Internet gave rise to multiple forums of discussion and alternative sources of information during the elections. While a wider use of social media increased the public debate, it also offered a greater opportunity to disseminate misleading contents and disinformation.

Party leaders used social media to convey key messages and campaign activities. Those were also used to circulate fabricated facts to create a negative perception against the opponent parties or the

¹⁹⁴ While most DPO-interlocutors stressed that TBSs also serve illiterate persons, the importance for this group is not seen to the same degree by NEC interlocutors.

¹⁹⁵ The cost of workshops and other means of the information transmission should be balanced. The cost of providing tactile ballot sleeves seems not the most expensive part so far, but information on their utilization.

¹⁹⁶ Article 25 ICCPR, United Nations Human Rights Committee, General Comment No. 25, paragraph 25: “The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”

¹⁹⁷ Also, in an effort to ensure journalists’ safety and proper deportment of media professionals, the Press Union of Liberia convened a symposium for Political Parties and Media on Safety & Deportment of Journalists during and after the 2017 Liberian Elections, on October 31, 2017. Politicians vowed to ensure the safety of journalists; and journalists and media workers have also guaranteed professional deportment through the historic transition in Liberia.

NEC, a practice that became more prominent prior to the NEC announcement of the rescheduled run-off date. This was perceived as a potential trigger for disruption of peace and stability. At the time, the President condemned "the abuse and misuse of social media through the use of invectives, hate speeches and outright vulgarities" and called on citizens to remain responsible and tolerant of diverging opinions¹⁹⁸. A new media company, KMTV, and a few radio stations and newspapers, present online and on social media, provided commentary-free Facebook live streaming of key electoral events, which enabled instant broad access to information including the diaspora. However, limited access to Internet in parts of the country curtailed the opportunity to benefit from those channels.

The media sector in Liberia is composed of at least 100 radio broadcasters (including 15 religious and 60 community radios), over 10 television channels and cable TV and 60 newspapers¹⁹⁹. UNMIL Radio and the state-owned Liberia Broadcasting System (LBS), which operates the radio station ELBC²⁰⁰ and the television channel LNTV²⁰¹, are the only media institutions with nationwide reach.

While the wide range of broadcasters and newspapers operating in the country contributes to a plurality of views, the nature of the media ownership, lack of legal and economic safeguards promoting journalists' welfare and safety and prevailing criminal defamation laws leaves media vulnerable to undue interference and induces journalists into self-censorship. Most media institutions operate under severe financial constraints and low pay is common among journalists²⁰².

LEGAL FRAMEWORK FOR THE MEDIA

Article 15 of the Constitution provides for freedom of expression, freedom of speech and of the press and the right to hold opinions without interference. The right of recourse to the courts to protect those freedoms in the state-owned media is guaranteed in the Constitution. However, provisions in the Penal Code related to criminal libel prescribe excessively punitive penalties, contrary to international practices protecting freedom of expression. Liberia became the first West African country to adopt a Freedom of Information Act in 2010, thereby providing a framework for easier access to information from the state. This marked a positive development towards reinforcing freedom of expression and the principles of transparency and accountability.

However, the media still operates under a weak policy context meant to safeguard their independence. The governance structure of the state-owned broadcaster leaves this media

¹⁹⁸ Executive Mansion, "President Sirleaf Decries Electoral Violence...", 19 October, 2017, http://www.emansion.gov.lr/2press.php?news_id=4212&related=7&pg=sp

¹⁹⁹ Information provided by the Ministry of Information, Culture Affairs and Tourism (MICAT).

²⁰⁰ Equatorial Latitude Broadcasting Corporation (ELBC) was established in 1956 as an amateur radio station.

²⁰¹ Liberia National Television (LNTV) was launched in 1964.

²⁰² The state broadcaster, LBS, reported to the EU EOM a significant reduction in the budgetary allotment for this fiscal year 2017/2018 [as for every other part of government given the significant reduction in the overall 2017/18 budget]. Also, the community media is highly dependent on individual or institutional grants. A Draft Collective Bargaining Agreement (CBA) drafted by the Press Union of Liberia (PUL) seeking to improve working conditions of journalists and establish a minimum salary of at least US \$150 has taken several years to discuss and is yet to be signed by the owners of the media institutions in Liberia.



organisation highly vulnerable to government interference and undue political influence, contrary to international principles on independence and editorial freedom of the media²⁰³. The LBS was established in 1980 as a government-owned public broadcasting entity with the primary mandate to promulgate governments' programs and policies²⁰⁴. LBS's Board of Directors, the Director-General and four deputies' directors-general are appointed by the President of Liberia. The Board of Directors is chaired by the Minister of Information, Culture Affairs and Tourism.

The existing legal framework also falls short of appropriate regulation in the context of elections and, in particular, with respect to ensuring fair and equitable access by contesting parties and candidates to state controlled media, thereby failing to guarantee a level playing field between candidates. This gap is inconsistent with the regional treaties and commitments signed by Liberia²⁰⁵. The NEC's power to promulgate regulations including in respect of airtime, has not been exercised in circumstances where the state-owned broadcaster is considered compelled by economic necessity to charge for all broadcasting activities. Accordingly, the airtime assigned to candidates and political parties was mainly subject to the financial means of the political parties, disadvantaging contestants with less resources. There are also no provisions in the law regulating paid airtime and space, which could open space for uneven treatment of contenders.

In the context of elections, the Liberian media was regulated mainly by the provisions of the Constitution and systems of self-regulation developed by the PUL. It was codified in a 2016 revision of the Code of Ethics for Liberian Journalists, and by the newly-launched National Media Council (NMC). The NMC was established for self-regulating media accountability and professional conduct in Liberia, pursuant to the journalism Code of Ethics and it replaced the previous Media Complaints Committee of the PUL.

Media guidelines on election coverage, also applicable to social media, were outlined in a Code of Conduct for Media issued by NEC, in collaboration with the PUL. The Code also identifies the NMC to give priority to the resolution of complaints against alleged media misconduct in election campaign coverage. Some 10 complaints were filed at the NMC during the election period. Only some of those were election related and included cases of a political party's supporter allegedly obstructing journalists from reporting and alleged partisan stance by media professionals. A number of complaints were either dismissed due to lack of evidence, withdrawn by both parties or were still waiting for hearing or adjudication.

Although during the campaign period there were no reports of a ban on publications or refusal of licenses, the power to issue and withdraw those permits remain in the government's control, contrary to international standards for the protection of media freedom and freedom of expression²⁰⁶. The Ministry of Information, Culture Affairs and Tourism (MICAT) is the sole authority to issue and sign final permits or recommend the Liberia Telecommunications Authority

²⁰³ Article VI, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, Banjul, The Gambia. See also ICCPR, General Comment N° 34, Article 19, Paragraph 16.

²⁰⁴ Decree 20, of 10 October 1980

²⁰⁵ African Union, African Charter on Democracy, Elections and Governance 2007, Chapter 7, Article 17 (3)

²⁰⁶ Article VII, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002, Banjul, The Gambia.

(LTA) to grant broadcast licenses²⁰⁷. Whereas, according to different stakeholders, MICAT does not exercise influence over the news and editorial contents, the Ministry's guidelines for issuing permits leaves room for government interference over media content.

A long-standing media law reform process brought a number of draft bills before the National Legislature, aimed at creating a truly independent public broadcaster, establishing appropriate regulatory structures with safeguards against government intervention, and to decriminalise press offences, particularly libel, by amending the Liberian Penal Law of 1978. The latter was submitted to the HoR by President Ellen Johnson Sirleaf on July 2017, in line with the Declaration of Table Mountain endorsed in 2012²⁰⁸. The proposed laws are still pending and waiting to be passed by the National Legislature. The preservation of a free media environment is essential to ensuring that Liberia's efforts to protect fundamental human rights are achieved. The future government could show its commitment towards this end by endorsing the media reform.

MEDIA MONITORING FINDINGS

10 OCTOBER PRESIDENTIAL AND HOUSE OF REPRESENTATIVES' ELECTION

Media offered extensive coverage of the 10 October's elections. However, imbalanced coverage provided by the state-owned broadcaster, with the ruling UP and its presidential candidate being given more time than opposition parties, and a media sector reliant on political sponsorship or politically aligned through direct ownership by candidates or their supporters, affected the right of access to media by some Presidential and HoR candidates with less financial means. The absence of provision for free airtime in the state broadcaster contributed to unequal treatment of political parties and candidates²⁰⁹.

Overall, UP campaigns received the largest share in the news and in non-news programmes in most of the monitored electronic and print media, followed either by the Government and the President or the opposition LP or CDC. The latter two and ALP enjoyed considerable additional media coverage on the radio stations and print media linked to each of those parties. The tone used

²⁰⁷ LTA being the statutory body tasked to regulate frequency spectrum usage. MICAT serves as the regulator and enforcement body of the government in all matters affecting communications in Liberia.

²⁰⁸ The Table Mountain Declaration calls for the abolishment of criminal defamation and "insult" laws across the African continent. Four media-related draft bills are awaiting to be passed by the National Legislature, including an act seeking to transform LBS into an independent national public service broadcaster, reintroduced to the parliament in early September 2017, an act to establish an Independent Broadcasting Authority, responsible for issuing licenses, and a policy framework for the community media sustainability.

²⁰⁹ From 8 September till 8 October, day of closing of the election campaign period for the 10 October Presidential and HoR elections, the EU EOM conducted the media monitoring of 15 broadcast and print media outlets. The sample consisted of eight radio stations, including state-owned ELBC, UNMIL, and privately-owned Prime FM, Farbric FM, Truth FM, Capitol FM, OK FM, Power FM in simulcast with Power TV, as well as three television channels, LNTV, Power TV and Prime TV, and the newspaper titles The Daily Observer, Front Page Africa, The Inquirer, New Democrat and The Analyst. The EU EOM resumed monitoring on 12 and concluded on 24 December, last day of the run-off campaign, and King's FM was added to the sample. Shiata FM was regularly monitored, but not included in the sample.



in the news in most of the monitored radio stations was largely neutral and positive with instances of negative reporting towards the major contenders.

However, news coverage of the campaign was highly monetised, and coverage reflected the parties and candidates' financial means. Whereas coverage of opposition parties was given through talk shows and interview style programmes, this approach did not ensure equal opportunity in the state-owned media, as candidates' appearances on radio and TV were determined chiefly by their financial capacity to buy coverage, and rather arbitrary editorial decisions on newsworthiness.

In its mostly neutral news coverage, ELBC radio allocated the largest share of exposure to UP campaigns (22 per cent), followed by the activities of Government entities (20 per cent) and the official duties of the outgoing President, Ellen Johnson Sirleaf (11 per cent). News coverage was dedicated to a significantly lesser extent to the opposition parties CDC (8 per cent) and LP (6 per cent), followed by ANC (5 per cent), MOVEE (5 per cent) and ALP (2 per cent). Other parties and candidates received less or no coverage. In prime-time news, the public television channel LNTV allocated a relatively similar share to UP and ANC (14 and 13 per cent, respectively), followed by smaller percentage given to CDC (6 per cent).

In non-news programming, the UP was also dominant on ELBC and LNTV through talk shows, political advertising, paid live radio coverage and recorded televised coverage of their rallies. ELBC allocated to UP 51 per cent of the time outside the news dedicated to political parties and candidates, followed by smaller shares given to ANC (10 per cent), CDC (7 per cent), MOVEE (7 per cent), ALP (6 per cent), LP (5 per cent), with remaining parties and candidates receiving less or no coverage. LNTV followed the same pattern described for ELBC.

Private electronic media, as well as some community radios, also allocated time in their talk shows and non-news programmes including political rally coverage where the financial means of political competitors permitted. Occasionally, time was allocated free of charge where the station considered having the candidate in studio newsworthy. Some privately-owned radio stations showed balance in the amount of news allocated to the major parties, although privileging either CDC or UP. LP benefited from substantial exposure in the news and talk shows on Truth FM.

Newspapers, some with online editions, provided diverse reporting and a scrutiny of the candidates and their platforms. Although the use of these print sources by the public is limited, newspapers played a relevant agenda-setting role in raising debate. However, biased content favouring UP, CDC and LP and demeaning their adversaries, opinion articles and sponsored contents not clearly identified as such and news presenting limited counter-balancing alternative views were prevalent in some print and electronic media, contrary to journalistic ethics and best practices.

Presidential debates received live radio and televised exposure and coverage in print media offering an opportunity for additional publicity for less known candidates. However, the events lacked representativeness, due to the absence of some of the contenders. While some candidates did not attend the debates alleging lack of availability, others reported they were not invited for some of the events. Presidential and HoR debates also took place at county level enlivening the campaign. Over half of the 20 presidential candidates used the two hours of free-airtime offered to each by UNMIL radio to promote their views nationwide.

The small number of female candidates participating in the presidential and HoR elections was reflected in the almost invisible news coverage of female political actors in the electronic and print media. In the monitored radio stations, the only female contestant in the presidential election



representing LRP received 4 per cent of the overall coverage dedicated to the candidates, while the CDC vice standard bearer received 3 per cent. The other five females standing for the vice presidency were virtually absent. Female contenders standing for a seat in the HoR received 3 per cent of the overall coverage on the radio. The UP standard bearer received the largest share dedicated to all candidates (22 per cent) on the monitored radios, followed by the standard bearers of LP (10 per cent), CDC and ANC (with 4 per cent each). Male contenders in the HoR election received 30 per cent of the overall coverage. The same trend was observed in the monitored television stations and print media.

26 DECEMBER PRESIDENTIAL RUN-OFF

Prior and during the campaign period for the rescheduled run-off, an increased partisan stance and polarisation observed in some traditional and new media contributed to increasing bias and misinformation in reporting, with an adverse impact on the right of voters to be accurately informed. Given the diversity of the media, this observed trend was mitigated by some varying availability of alternative sources of information.

The state-owned radio ELBC offered fairly equitable news about the two candidates. This represented an improvement on coverage provided during the first round. In its mostly neutral news bulletins, airtime allocation to UP (13 per cent) and CDC (10 per cent) was reasonably balanced, while the largest share in the news went to the Government (32 per cent), the President (20 per cent) and NEC (19 per cent). However, in leading talk shows, ELBC did not evenly inform the public. There was an absence of equal airtime in leading talk shows, with largely positive content in favour of UP (41 per cent), while CDC received 9 per cent. On the state-owned television channel LNTV, the UP dominated the news coverage, while talk shows provided limited discussion and debate of either candidate. EU EOM media monitoring showed a bias in reporting by various other media, in terms of amount of time, space and tone of coverage given to each candidate.

The EU EOM observed that none of the candidates used the free-of-charge airtime made available after the 10 October elections for political advertisement at the public radio and TV channels of the LBS. However, UP contracted the LBS for live campaign coverage, subject to a fee, as well as other privately-owned radio stations. CDC had its campaigns covered live by other privately-owned radio channels, also subject to payment. Both candidates enjoyed additional coverage on the privately-owned radio stations and print media from outlets partisan to each of the political parties.

XIII. ELECTION DAY OBSERVATION

10 OCTOBER, PRESIDENTIAL AND HOUSE OF REPRESENTATIVES ELECTION

Despite the long queues and waiting times, the first round of elections was characterised by a high voter turnout demonstrating Liberian voters' strong commitment to elect their future President and Representatives.

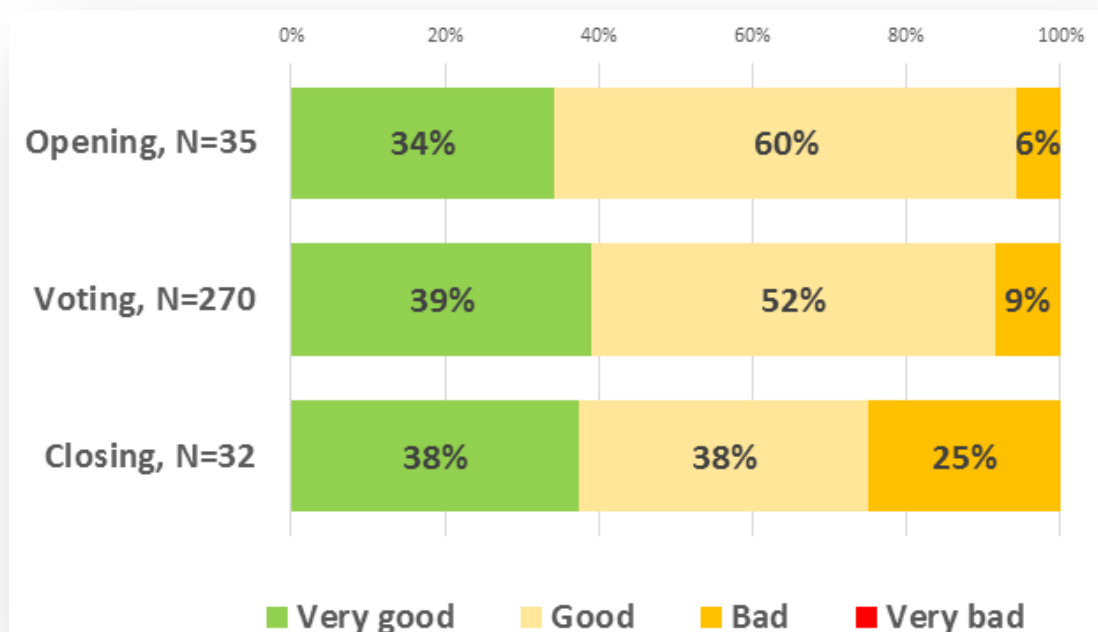
The main factors of the first-round delays can be attributed to inconsistent training of polling personnel, late divulgation of polling procedures, and insufficient guidelines for queue control as

well as the high number of candidates on the two ballots²¹⁰. However, the main factor delaying balloting was caused by the Final Voter Roll (FRR) as it was hard and time-consuming for voters finding their assigned Polling Place and polling officials using the FRR faced problems in finding and directing voters²¹¹.

Tally procedures were at time lacking coherence in transmission procedures and a number of ballot recounts took place at the Tally Centers. In other cases, tally sheet results had to be checked for mathematical consistency and inputted to the tally software which transmits the data to the central tally in Monrovia. The NEC central tally was conducted by the data department of the NEC and this process was not open to observation.

The EU EOM conducted 337 observations on Election Day, visiting a total of 297 polling stations. The overall assessment of the conduct of the opening procedures was *good* (60 per cent) or *very good* (34 per cent). 89 per cent of Polling Places observed opened on time or within half an hour delay. The overall conduct of the voting was generally assessed as either *good* or *very good*. Despite the overcrowding observed in many Voting Precincts, in 97 per cent of the observed Polling Places the secrecy of the ballot was preserved. EU EOM observers carried out 266 observations during the voting hours.

Overall conduct of Opening, Voting and Closing (first round elections)



²¹⁰ 20 Candidates on the Presidential ticket and an average of 22 on the House of Representatives elections for each of the 73 Electoral Districts.

²¹¹ Despite the overcrowding observed in many Voting Precincts, in 97 per cent of the observed Polling Places the secrecy of the ballot was preserved.



For the first round, the EOM noted the widespread presence of party representatives, mainly from CDC (97 per cent), UP (95 per cent), LP (91 per cent). Domestic observers from ECC or LEON were present in 63 per cent of observed Polling Places.

The EU EOM observed 72 tally processes and assessed that the facilities of the TCs were adequate to the conduct of the process. While party agents were present to observe the tally, in 12.5 per cent of cases their presence affected the process negatively. In almost all cases reported party representatives had a clear view of the tally. The overall conduct of the count at TCs was evaluated as good (67 per cent) or very good (22 per cent). In 36 per cent of cases the Record of the Count Forms (RoCFs) were not checked against the reconciliation of the ballot figures featuring on another form. Discrepancies between the original RoCFs and the data entered in the tally software were observed in 41 per cent of cases. This may be a consequence of the allowed procedure for altering the figures on RoCFs at the TC (except the votes obtained by candidates) to provide for mathematical coherence.

26 DECEMBER, PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTION

The second round of the Presidential and Vice-Presidential election which was initially announced for 7 November took place on 26 December due to the complaints and appeals period following the 10 October elections²¹². Despite the uncertainty arising from the delaying of the second round, Liberian voters and citizens showed patience and played a key role in the conduct of peaceful elections.

The EU EOM observed visible improvements compared to the first round of elections, queues were better organized, and voters found it considerably simpler to find their assigned Polling Place, also polling staff better performed their duty²¹³. Polling staff were better trained by the NEC and the additional 385 queue controllers to verify the Voter Card (VC) numbers and direct voters to the correct Polling Precincts (PPs), together with posters featuring the index of the VC numbers, further helped voters in identifying their correct PP. The 7 December SC ruling also contributed to enhancing polling procedures especially the SC Condition that the FRR be displayed at all PPs²¹⁴. Candidate representatives were also better trained and played a crucial role enhancing the credibility and transparency of the second round.

Tallying after PPs counting procedures also visibly improved compared to the first round and the NEC was able to announce final results only three days after the second round on 29 December. EU EOM observers were present in all 19 Tally Centers and could cover almost 100 per cent of the tally process.

²¹² See section IV Electoral Disputes

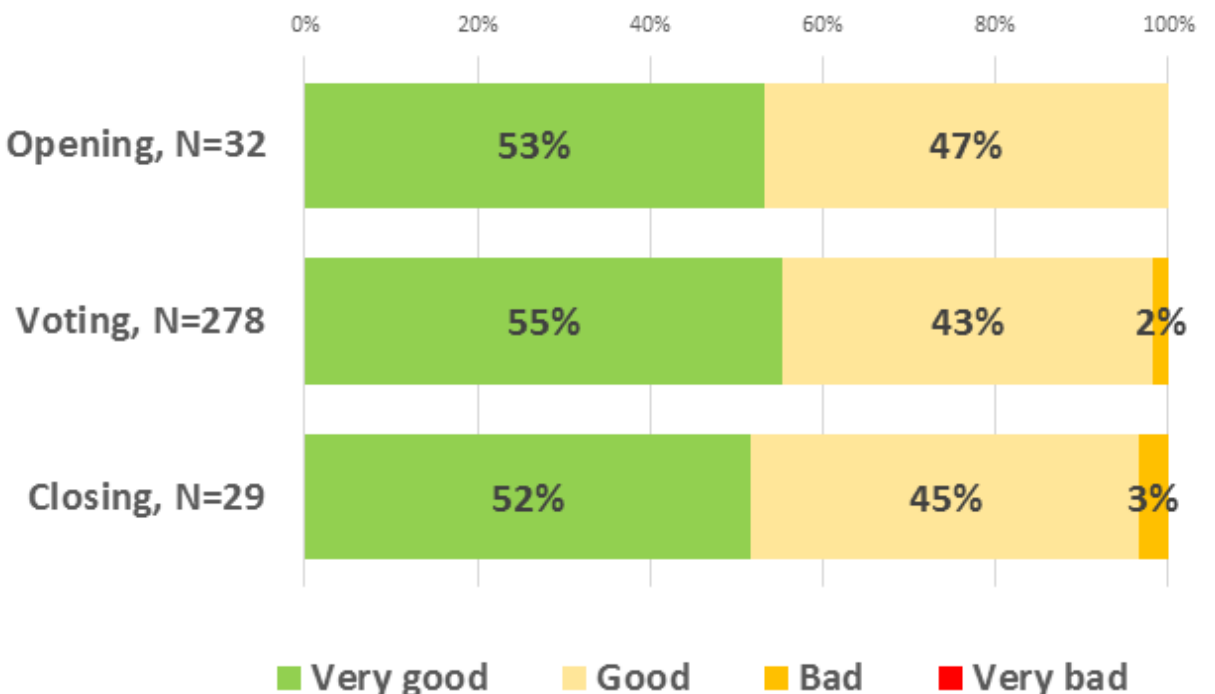
²¹³ Turnout in the first round of presidential and HoR elections reached 75 per cent, while run-off (only presidential elections) noted major decrease to the level of 56 per cent.

²¹⁴ See section National Legal Framework: Constitutional, Legislative and Regulatory Considerations.

The EU EOM made 338 (298 *unique*)²¹⁵ observations on the Election Day, comprising 32 opening, 278 voting and 29 closing observations. At observed openings, 78 per cent of PPs started on time. Seven PPs opened with a delay of up to 30 minutes, mostly due to unpreparedness of the PP staff. Nevertheless, the overall assessment by observers of the conduct of the opening procedures was “very good” (53%) and “good” (47%).

The overall conduct of the voting was assessed as “very good” or “good” despite isolated reports on minor procedural imperfections: for example, not applying indelible ink on voters’ fingers. In 95 per cent of the observed PPs, there was a female member of the polling staff, including female Presiding Officers in 16 per cent of cases. In 95 per cent PPs, the secrecy of the ballot was preserved.

Overall conduct of Opening, Voting and Closing (runoff elections)



“During the run-off, CDC was represented in all PPs observed, while the UP was present in 99 per cent of cases. Domestic observers from ECC or LEON were present in 29 per cent of observed PPs, a decrease by half from the first round.

²¹⁵ “289 unique” observations refers to those polling stations that have been observed only one time during Election Day, while the rest of the 338 refers to those polling stations that have been observed more than once at different times during the opening, voting and/or counting phase.



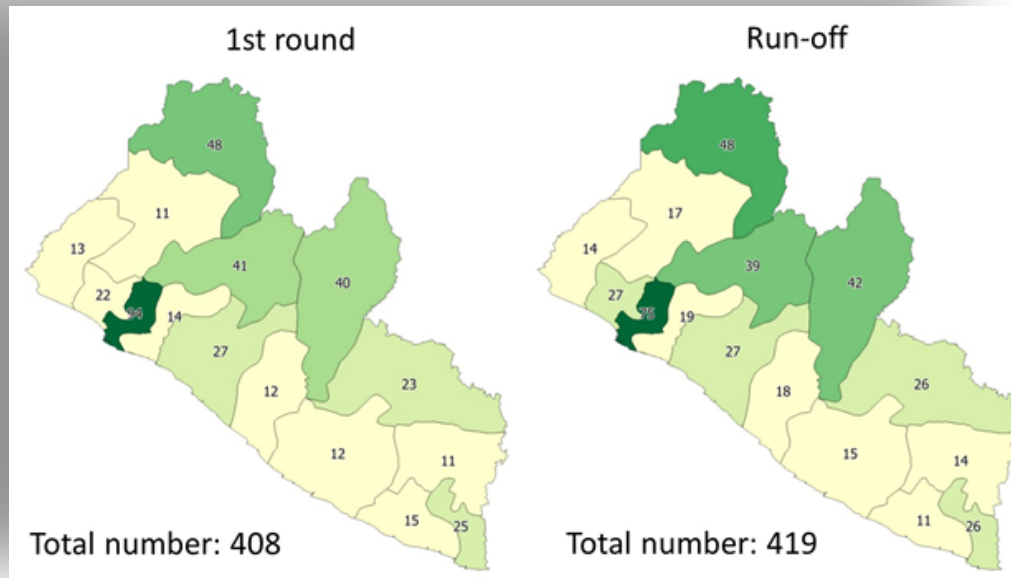
Furthermore, the Electoral Supervisors (ES) played a significant role during the Election Day, providing guidance to the polling staff and collecting the results after counting at the PPs was concluded. EU EOM observers evaluated their role positively, indicating that more resources are needed for this element of the process to avoid creation of a bottleneck in the results retrieval by few ESs. Given the importance of this step in the elections, difficult terrain and challenging communication in the country, consideration could be given to increasing the number of ESs to reduce the number of the Voting Centers of their responsibility.

After PPs counting procedures were concluded, EU EOM observers continued to follow the process of the return of election results and the intake of the election material at the Tally Centers throughout the country. On 27 December, NEC commenced the tally process.

Tally was conducted in 19 Tally Centers (TC/MEOs) under the supervision of the Magistrates of Elections, who mostly were not entirely aware of the tally procedures and shifted the leadership of the process to data entry staff deployed to the MEOs from the NEC HQ. While the tally procedure was assessed by EU EOM observers as transparent, the TC arrangements were not consistent throughout the country. Notwithstanding that such coherence is not ultimately necessary, its lack resulted in tally procedures not being followed, for example, the tamper evident envelopes containing the results sheets which were delivered opened to the tally in some cases²¹⁶ (10 out of 79 observations). The tally procedure additionally allowed for the alteration of results sheets in case of mathematical discrepancy. While positively the figures reflecting results obtained by candidates were not permitted to be changed, which was mostly followed, in many cases the results sheets figures on invalid ballots were altered²¹⁷. Whereas any amendments to the results sheets should commonly be avoided, at minimum and apart from the results of candidates, the results sheets need to provide an accurate information on the number of invalid ballots. This could contribute not only to the credibility of the process but also give an insight to the voters understanding thus feed into future decisions on ballot design and marking procedures.

²¹⁶ During the first-round, the EU EOM conducted 42 observations of the intake of TEEs and recorded that TEEs were arriving opened to the Tally Centers during their presence in three cases, during the run-off for 61 observations this was reported on 10 observers reports.

²¹⁷ The EU EOM conducted a sample tally exercise based on the copies of the RoC for the first round of the Presidential elections. Of On 1039 RoC analyzed (19.2 per cent of total Polling Places,) 37 per cent of the RoC had “Total Invalid Votes” figure altered.



In total EU EOM observers transmitted 827 quantitative reports to the EU EOM database, including 151 tally reports.

	Opening	Voting	Closing	Tally	All observations
1st round	35	270	32	72	409
Run-off	32	278	29	79	418
All observations	67	548	61	151	827

Opening, Voting, Closing and Tally = 827²¹⁸

XIV. RESULTS AND POST-ELECTION ENVIRONMENT

Final results of the 10 October ballot show an evident disconnect between the presidential and the legislative vote. For instance, in South Eastern counties like Grand Gedeh, Sinoe, Grand Kru and River Gee, where the CDC Presidential candidate obtained an absolute majority in the first round (75, 71,5, 63,5 and 59,8 per cent respectively), the CDC won one single legislative seat out of eleven electoral districts altogether. Conversely, the UP standard-bearer arrived second in Sinoe

²¹⁸ There were 19 Tally Centers located in 15 counties. Four of the counties (Bong, Lofa, Nimba, Montserrado) were divided by two (lower and upper) Tally Centers. On the map presented all observations divided by county.



County with only 12,9 per cent of the votes, however, his party won with a comfortable margin all the electoral districts composing the county's HoR constituency (three seats).

Together with the rather volatile nature of party affiliations in Liberia (e.g. frequent defections in the wake of lost primaries or internal disagreements, lawmakers changing party in the course of their legislative mandate, etc.), the divergence between the presidential and the legislative vote indicates, as already observed during the campaign period, that the Liberian electorate tends to favour individual personalities over a political party. This posture is further compounded by the parties' lack of clear ideology and distinct vision for the country.

No single political party has dominated Liberia's bicameral legislature in recent years²¹⁹. Following the 2017 legislative election, the lower house will remain split among several opposing parties, with only some associated to one of the two main blocs. Although the CDC is in appearance the biggest party with 21 seats out of 73 in the HoR, the UP will maintain its strong position with 20 seats, further bolstered by the fact that the People's Unification Party (the PUP led by the Vice-President's running mate on the UP Presidential ticket) has secured five seats in the lower house²²⁰.

The final results indicate the incoming President will not be in a position to secure an absolute majority in the Legislature. As HoR seats will be distributed among a dozen parties and 13 independent candidates, while the 30-seat Senate is currently divided among nine political parties and three independents, lack of legislative coherence may delay the implementation of future reforms. In a context of unstable political affiliation and considering the number of independent candidates elected, eventual alliances in the legislature may be determined on an *ad hoc* basis.

Following the announcement of the results for the first round of the Presidential election, the CDC made it to the 26 December run-off with a comfortable margin ahead of the UP (38,4 per cent and 28,8 per cent of the votes respectively), thus putting the ruling party under pressure. The second round of the Presidential election confirmed the CDC succeeded in attracting large numbers of voters beyond its historic strongholds. Whereas Lofa County remained indisputably a UP bastion, the outcome shows the CDC has gained significant ground in counties like Bong, Margibi and Grand Bassa²²¹.

²¹⁹ The 73-seat House of Representatives elected in 2011 included lawmakers from eleven parties and nine independent candidates, with the ruling party holding barely a third of the seats (24 seats).

²²⁰ The CDC coalition won 21 seats against a total of 14 seats in 2011 (i.e. eleven for the Congress faction and three for the NPP faction). The UP obtained 20 seats against 24 in 2011.

²²¹ Bong, Lofa, Margibi and Grand Bassa are the counties with the highest number of registered voters after Montserrado (which includes the capital city Monrovia) and Nimba. With 208,105 (Bong), 167,555 (Lofa), 154,328 (Margibi) and 145,798 (Grand Bassa) registered voters, each of these counties can bring a much higher number of votes than any of the nine less populated counties.



XV. CIVIL SOCIETY AND CITIZENS OBSERVATION

Civil society participated in Civic and Voter Education, training, peace promotion and domestic observation, but still had limited involvement in electoral reform and monitoring

Having maintained high importance before and in the post-civil war-period, substituting absent government services and supporting the post-conflict rehabilitation, there is a large number of civil society organizations (CSOs) in Liberia. Of those, proportionally many are based in and near the capital Monrovia. Many CSOs seem to struggle with the transition from a scenario of past, largely humanitarian, funding policies to an evolving development context, although in a still very poor country. In part in cooperation with government institutions²²², a large number of CSOs have been actively involved in the electoral process, with a focus on Civic and Voter Education and peace promotion. While CSOs implementing civic education projects for the NEC and donors had regular engagement with the NEC, many other CSOs' interaction with the NEC, and vice versa, in this election process was mainly of a perfunctory nature, for advocacy on specific concerns of their respective target groups²²³. Different to the IPCC-meetings, which take place frequently between the NEC and political parties, there is so far, no regular and institutionalised forum which would guarantee two-way information flow between the NEC and civil society. Several CSO interlocutors expressed discontent about insufficient communication from the side of the NEC, about having received low priority in funding of election-related programs, and a wish for a stronger information flow and two-way dialogue. NEC interlocutors recognised civil society as an important stakeholder and CSOs as important partners, yet voiced a level of discomfort with inputs and feedback to the NEC's work being given in the form of press and radio statements by some CSOs instead of a stronger dialogue orientation.

Two domestic observer groups undertook comprehensive election observation, with participation of key CSOs from the fields of faith-based organisations, youth, women's, DPOs and organisations in the areas of governance and research, and contributed with press statements and the publication of research reports to the election process: The *Elections Coordinating Committee (ECC)* deployed 89 LTOs, 2,170 STOs for the October 10 election and, and 1,100 STOs for the rescheduled run-off. The *Liberia Elections Observation Network (LEON)*, observed the election process with 128 LTOs, the 10 October election with 1,000 STOs and the rescheduled run-off with 1,040 observers, including 133 LTOs. The latter group strongly monitors and advocates for the inclusion of persons with disabilities in the elections. Other institutions and groups monitoring and observing the election process were the INCHR with its human rights monitors based in all counties, with a focus on hate speech and observance of human rights in the election, the West Africa Network for Peace Building which deployed peace monitors and had a situation room for election conflict

²²² The NEC, INHRC, government ministries, amongst others.

²²³ For instance, the Prison Fellowship of Liberia engaged the NEC advocating around the right to vote for pre-trial detainees and other eligible persons in detention, the Alliance on Disability advocated for better measures for inclusion of PwDs, the IRC advocated for solving discrimination issues regarding veiled Muslim women and persons with Muslim names in the voter registration.



mediation supported by ECOWAS Commission and UNMIL, and the Angie Brooks International Centre-Women's Situation Room (ABIC-WSR) with other women's organisations²²⁴. While the ECC and LEON, as other CSOs, were largely absent at the national tallying process for the October 10 election, they observed the tallying process in the rescheduled run-off.

Senatorial by-elections are upcoming, and additionally, in the future the Liberian institutions may be steering election processes with progressively less international technical assistance. Therefore, it would be beneficial if civil society groups with expertise in elections, such as the ECC and LEON could observe not only the period around national elections, but the electoral cycle as a whole, ensuring inclusive information sharing and collection with other civil society actors.

²²⁴ Different from expected by some women's CSOs installing early warning and response mechanisms for cases of gender-based violence in the elections, there were only few minor incidents reported.



XVI. ANNEXES

ANNEX 1 - TABLE OF RECOMMENDATIONS

NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
1	<p>Liberia stands out among most of its fellow ECOWAS member states, having a highly restrictive ethnicity-based definition of citizenship in its Constitution. Notwithstanding its historical context, many persons of non-Negro descent are born in Liberia but are excluded from citizenship, civil and political rights because of this provision.</p> <p>See Section V "Legal Framework", page 11, para. 2.</p>	<p>Initiate a constitutional referendum process for the successful removal of the ethnic definition of Liberian citizenship. Working co-operatively and using advocacy and civic education could contribute to the alignment of Liberia with its international and regional obligations prohibiting racial discrimination.</p>	<p>Amendment to article 27 (b).</p>	<p>National Legislature.</p>	<p>ICCPR, article 2 and 25</p> <p>ECOWAS Protocol, article 1(g)b ACDEG, article 8</p> <p>ACHPR, article 2 – « Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status”</p> <p>UDHR, article 21.2 Everyone has the right of equal access to public service in his country.”</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
2	<p>Legal provisions impacting timelines for electoral disputes were to be found in a variety of other legislative and regulatory instruments, which were not always accessible or evident to all stakeholders.</p> <p>See Section V "Legal Framework", pages 13 and 14, para. 5, 6 and 7.</p>	<p>Review election laws and civil procedure laws to consolidate all relevant timelines and any procedural extensions (arising either under legal practice or civil procedure rules) to ensure transparency, accessibility and ease of comprehension for all election stakeholders.</p>	<p>Amend as necessary the New Elections Law to add clarity on timelines for complaints and related to various stages hearings and appeals.</p>	<p>National Legislature.</p>	<p>Right to remedy “Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.” ACDEG, article 17.2.</p>
3	<p>The Supreme Court is overburdened with a significant backlog of cases, while the Constitution further only allows a restricted period of seven days within which the SC has the opportunity to adjudicate election cases brought before it.</p> <p>See Section V "Legal Framework", page 14, para. 8.</p>	<p>Consider the establishment of a lower appeals court to alleviate an overburdened Supreme Court, which could equally contribute to the expeditious handling of cases including election complaints.</p>	<p>Promulgation of legislation to enable establishment of an intermediate appeals court.</p>	<p>National Legislature and Supreme Court.</p>	<p>Right to remedy “Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.” ACDEG, article 17.2.</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
4	<p>Much controversy surrounded legislation requiring presidential appointees to resign between 2 and 3 years before elections if they wished to run. While deemed constitutional by the Supreme Court in March 2017, the provisions may impede participation by competent public servants and the obligation to resign is unduly onerous when adequate alternatives with the legal framework exist to operate as dissuasive of abuses of position.</p> <p>See Section V "Legal Framework", pages 16 and 17, para. 14, 15 and 16.</p>	<p>Amend 2014 Code of Conduct Law to promote participation and the right to stand. The Liberian Civil Service Standing Orders permitting leave of absence could facilitate presidential public appointees to stand for election without having to fully resign in preparation for an intended political candidacy.</p>	<p>Amend section 5 of the 2014 CoCL.</p>	<p>National Legislature.</p>	<p>ICCPR art 25, GC 25 par 4, "Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. "</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
5	<p>26 political parties registered with the NEC and competed in the 2017 elections. Liberia's framework appears to encourage strong party-political competition but does not seem to provide adequate mechanisms to encourage enduring party cohesion and platform-based politics. Several parties emerged only in the weeks before the election.</p> <p>See Section V "Legal Framework", page 17 and 18, para. 18, 19 and 20.</p>	<p>Review criteria for the establishment and registration of political parties to promote more cohesion and policy in party organisations. Such a review in consultation with stakeholders could consider membership requirements, changes to the number of constituencies in which parties must have a presence, as well as the levels of registration fees payable.</p>	<p>Amendments to NEL and NEC regulations.</p>	<p>National Legislature and NEC.</p>	<p>ICCPR General Comment (GC) 25, par 26. "States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder".</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
6	<p>Political parties can comply with the NEC nominations requirements, but without - genuine effort ensuring their nominees are approved as candidates. Many parties participating in the 2017 elections had fewer candidates qualified to run than the number they nominated. By complying with the nominations requirements alone political party could compete but without necessarily fielding candidates beyond specific geographic areas.</p> <p>See Section V "Legal Framework", page 18 and 19, para. 21 and 22.</p>	<p>Review of regulatory requirements relating to political parties' nomination of candidates and the assessment procedures related thereto so as to minimise <i>pro-forma</i> nominations and ensure that political parties work to build a national spread and actively promote nominees with genuine candidacy potential.</p>	<p>More rigorous assessment procedures to nominations from Political Parties.</p>	<p>NEC.</p>	<p>ICCPR General Comment (GC) 25, par 26. "States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder".</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
LEGAL FRAMEWORK - SECTION V					
7	<p>A broad body of election related offences leaves a scope for review to ensure greater certainty, more balanced penalties and as regards enforceability. There is some degree of incoherence and uncertainty on fines with broad scope on the application of some severe sanctions, though a lack of capacity for the effective implementation of some penalties could be a basis for alternative approaches.</p> <p>See Section VI "Election Offenses", page 1.</p>	<p>Review provisions on electoral offences to address and remove any ambiguities and incoherencies as well as reviewing the scope and breadth of penalties and sanctions to ensure greater certainty and enforceability.</p>	<p>Review and Amend as necessary New Elections Law, Section 10.</p>	<p>National Legislature.</p>	<p>Legal Certainty/ Certainty of laws</p> <p>ICCPR, Art 2(2)</p> <p>A/HRC/RES/19/36, 2012, p. 16: [The Human Rights Council] calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: (c) Ensuring that a sufficient degree of legal certainty and predictability is provided in the application of the law, to avoid any arbitrariness.</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
ELECTORAL COMPLAINTS AND DISPUTE RESOLUTION -SECTION VII					
8	<p>There is a lack of precision and certainty available to the public through the elections law on timelines associated with complaints and aspects of various mechanisms for complaint filing. In some actions, complainants from remote areas argued the law operated against them since the 48 hours appeal time from decisions of HOs to the BoC in Monrovia made compliance difficult.</p> <p>See Section VII "Electoral Complaints and Appeals", page 20 and 21, para. 1 and 2.</p>	<p>NEC to review and amend all appeals timelines in the regulations to ensure consistency and fairness throughout. The review could entail a moderate extension of the 48 hours timeline for appeal from Hearing Officers to the BoC to ensure due process and equal access across Liberia.</p>	<p>Review of NEC regulations.</p>	<p>NEC.</p>	<p>ECOWAS Protocol, article 7 (Adequate Measures);</p> <p>UDHR, Art 8 ICCPR, Art 2 (Right to an effective Remedy);</p> <p>ACDEG, article 17.2 (strengthen national mechanisms).</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
ELECTORAL COMPLAINTS AND DISPUTE RESOLUTION -SECTION VII					
9	<p>Over the course of the pre-election and election period, proceedings demonstrated some shortcomings in the professional capacity of lawyers on all sides as well as among some of those administering various stages of the hearings. One of the important challenges facing Liberia's judiciary - training of lawyers - remains a key issue for the efficient functioning of judicial institutions.</p> <p>See Section VII "Electoral Complaints and Appeals", page 22 para. 2 and page 23 para. 5.</p>	<p>Comprehensive practical trainings for both lawyers and Hearing Officers to be implemented well in advance of the next elections with the possibility for refresher trainings to ensure enhanced capacity in the effective administration of election complaints cases and to avoid such matters becoming unduly burdened and delayed with unnecessary legal formalities.</p>	<p>NEC action - No legislative amendments required</p>	<p>NEC.</p>	<p>UDHR, Art 8 ICCPR, Art 2 (Right to an effective Remedy);</p> <p>ECOWAS Protocol, article 7 (Adequate Measures);</p> <p>ACDEG, article 17.2 (strengthen national mechanisms).</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
ELECTORAL COMPLAINTS AND DISPUTE RESOLUTION -SECTION VII					
10	<p>On 6 November, the SC issued a Stay Order halting the presidential run-off and until the final determination of a complaint raised by the Liberty Party. The SC appeared to give preference to the public interest nature of the complaint and the due process rights of the complainant.</p> <p>See Section VII "Electoral Complaints and Appeals", page 25 para. 14.</p>	<p>Review of article 83 and its implications for the timeline for handling complaints against presidential election results considering the SC ruling of 6 November 2017</p>	<p>Consider a constitutional referendum to remove uncertainty on the span of appeals timelines to safeguard future inaugurations against potential conflicts with complaint timelines.</p>	<p>National Legislature.</p>	<p>ECOWAS Protocol, article 7 (Adequate Measures);</p> <p>ACDEG, article 17.2 (strengthen national mechanisms).</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
ELECTION ADMINISTRATION - SECTION VIII					
11	<p>The NEC BoC sessions are not open to public and, with some exceptions, their decisions are not readily accessible to the Liberian public and stakeholders. For example, key decisions on procurement, appointments and/or dismissal of Magistrates, budget, candidate registration, and a detailed election calendar and tally procedures would profit from publishing. A number of essential information on the elections was not available or published with a considerable delay. Among others, accurate statistics on HoR candidates, gender disaggregated data on voters registered by Polling Place, number of omitted from FRR voters, accounts of ballots, polling staff statistics, detailed election calendar.</p> <p>See Section VIII on Election Administration, page 25, para.2.</p>	Timely publication of the NEC BoC decisions was unavailable or published with a considerable delay on the NEC website.	NEC Regulations/ Guidelines.	NEC.	UNCAC Art. 10 (a); ICCPR Art. 19(2); UN CCPR 34 p. 19



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ELECTION ADMINISTRATION - SECTION VIII					
12	<p>Electoral system of Liberia expressed in the Constitution requires setting up of electoral constituencies for the House of Representatives elections according to the population data. Equally the boundary delimitation needs to reflect the obligation for equality suffrage (“one person one vote”). Since the Comprehensive Accra Peace Agreement neither were realised.</p> <p>See Section VIII, "Election Administration" under subsection "Electoral System", page 27 and 28, para 1.</p>	<p>Delimitation of electoral constituency boundaries should be done in accordance with the Constitution and Liberia’s international obligations.</p>	<p>Repeal Decree 20 of 2010 and introduce legislation to allow optimal use of population data for the redrawing of constituency boundaries in accordance with the constitution.</p>	<p>National Legislature, NEC.</p>	<p>ICCPR Art. 25, UN CCPR GC 25 p. 21 Istvan Mátyus v. Slovakia, Comm. No. 923/2000; UN Doc. A/57/40 (Vol. II) at 257 (2002) p. 9.2</p>



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ELECTION ADMINISTRATION - SECTION VIII					
13	<p>The current system of active periodic voter registration poses ongoing difficulties for Liberia which have among things manifested in challenges to the FRRs produced from such a system of registration. A Civil Register, if implemented effectively, can potentially address shortcomings by continuous update of the voter's pool.</p> <p>See Section VIII, "Election Administration" under subsection "Voter Registration, page 30, para. 6.</p>	<p>Consideration of support towards existing project of creation of a Civil Registry and using it as a basis for registering voters potentially transitioning towards passive voter registration arrangement.</p>	<p>NEL articles on voter registration and following regulations of the NEC. If passive voter registration is introduced on the basis of NBIS: Inclusion of the data protection and transparency clauses to the laws relating to NBIS and related procurement, notably to "An Act to Repeal PRC Decree #65 Establishing the National Identification Card System and Establish in Lieu Thereof the National Identification Registry" of August 1, 2011. This is meant also to contain obligations and sanctions on part of the private providers to NIR.</p>	<p>National Legislature, NEC, Government.</p>	<p>ECOWAS Protocol A/SP1/12/01 art. 4.1</p> <p>ICCPR, GC 25 p 11 States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
THE ELECTION CAMPAIGN - SECTION IX					
14	<p>Legal provisions regulating campaign activities are currently scattered across several documents (1986 Constitution, New Elections Law, National Police Act, CoCL 2017, NEC Regulations and Guidelines), with a lack of precise directives for the approval and co-ordination of political gatherings during the official campaign period.</p> <p>See Section IX "The Election Campaign", under the subsection "Campaign Environment", pages 32 and 33, para. 4, 6 and 8.</p>	<p>With a view to prevent the holding of conflicting campaign events that could induce violence, effective management of larger political gatherings would benefit from the formulation of harmonised regulatory requirements in one single legal instrument to be issued by the NEC and enforced by the NEC in cooperation with Security Services.</p>	<p>Review and amend the NEC regulations as necessary. The lack of precise directives for the approval and co-ordination of campaign events during the official campaign period should be addressed through the establishment of standardised procedures for political parties and candidates to submit a campaign calendar to the NEC.</p>	NEC.	<p>“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”, ICCPR (1966) Art. 21</p>



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THE ELECTION CAMPAIGN - SECTION IX					
15	<p>Political parties deployed numerous party agents to Polling Places across Liberia, but their activities contributed little substantive support to allegations of irregularities raised in the wake of the 10 October ballot.</p> <p>See Section IX "The Election Campaign", under the subsection "Party Agents", page 34, para. 2</p>	<p>Political parties and their poll watchers' commitment to the integrity of the electoral process must be supported and strengthened. Considering that electoral complaints typically rely on party agents' reports and testimonies, political parties must conduct party agents' recruitment, training and deployment more professionally.</p>	<p>No legal amendments required. Poll watchers' contribution to the integrity of the electoral process could amongst others be supported by the EMB. The NEC must ensure political parties and independent candidates understand the role of their representatives and support sound training on electoral procedures for them to be aware of their rights, duties and responsibilities during the whole electoral process, including during tabulation of results.</p>	<p>NEC and Political Parties.</p>	<p>"There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes", ICCPR (1966), HRC GC 25, § 20</p> <p>"Member States commit to ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations", AU Declaration on the Principles Governing Democratic Elections in Africa (2002), Art. III</p> <p>"Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives" AU Declaration on the Principles Governing Democratic Elections in Africa (2002), Art. IV, § 7</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
POLITICAL FINANCE - SECTION X					
16	<p>Legislation for collecting, scrutinising and disclosing financial reports is currently not fully enforced, also because the NEC lacks the necessary capacity and expertise. Political actors are not fully aware of the legal requirements they must fulfil. This undermines the level playing field among contestants and the transparency of the process.</p> <p>See Section X "Political Finance", page 35 and 36, para. 9, 10 and 12.</p>	<p>Establish an appropriately resourced department on campaign and political party finance within the NEC to enhance the institution's capacity and expertise for an efficient enforcement of regulations. The unit would be responsible for conducting systematic verification of submitted accounts, application of sanctions where applicable and conducting information campaigns among political actors.</p>	<p>No legal changes required.</p>	<p>NEC and Government.</p>	<p>Transparency in funding and avoiding distortion of election process by disproportionate expenditure</p> <p><i>"Each State Party shall adopt legislative and other measures to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and incorporate the principle of transparency into funding of political parties."</i></p> <p>African Union Convention on Preventing and Combatting Corruption, art. 10.</p> <p><i>"Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined, or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."</i></p> <p>ICCPR, art. 25, General Comment 25, para. 19.</p> <p><i>"Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."</i></p> <p>UNCAC, article 7.3.</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
POLITICAL FINANCE - SECTION X					
17	<p>Financial oversight can only be effective if submitted reports are checked against relevant data from the field. Otherwise, reporting remains <i>pro-forma</i> without reflecting the real flows of funds. Several public and private institutions could provide the NEC with necessary information (e.g. from tax and money-laundering databases with international outreach through ongoing co-operation with ECOWAS and OECD, cases of illicit funding, bank transfers etc.)</p> <p>See Section X "Political Finance", page 37, para. 13.</p>	<p>Increase the NEC's capacity to scrutinise submitted reports by establishing or strengthening co-operation and information-sharing with private banks and relevant state tax and integrity institutions, e.g. Liberia Revenue Authority, Ministry of Justice, Liberia Anti-Corruption Commission, Financial Intelligence Unit.</p>	<p>No legal changes required. Co-operation can be enhanced through inter-institutional Memoranda of understanding.</p>	<p>NEC, State Integrity, Tax Institutions and Private Banks.</p>	<p>Transparency and accountability of funding</p> <p><i>"Each State Party shall adopt legislative and other measures to proscribe the use of funds acquired through illegal and corrupt practices to finance political parties; and incorporate the principle of transparency into funding of political parties."</i></p> <p>African Union Convention on Preventing and Combatting Corruption, art. 10.</p> <p><i>"Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined, or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."</i></p> <p>ICCPR, art. 25, General Comment 25, para. 19.</p> <p><i>"Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."</i></p> <p>UNCAC, article 7.3.</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
HUMAN RIGHTS - SECTION XI					
18	<p>Some citizens were not afforded the opportunity to exercise their franchise contrary to Liberia's international commitments among them citizens who attained the age of eighteen between the date of closure of voter registration and the polling days, as well as detainees, the hospitalised, and persons unable to leave their homes.</p> <p>See Section IX "Human Rights", page 39, para. 4. See also Section V "Legal Framework", page 15 and 16, para. 12 and 13.</p>	Implement effective measures to ensure the opportunity to vote for all qualified citizens	Review and consider NEC regulations on registration of voters; Legislative to consider reintroducing Constitution art. Ch. VIII, 80c., omitted by Legislative Act in 2004.	National Legislature and NEC.	<p>Right to vote:</p> <p>“States must take effective measures to ensure that all persons entitled to vote are able to exercise that right” ICCPR CG 25, para 11;</p> <p>“Every citizen shall have the right and the opportunity (...): (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors“ ICCPR, art. 25.</p>



No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
HUMAN RIGHTS - SECTION XI					
19	<p>Although having been the first country in Africa to elect a female head of state into office in 2005, re-elected in 2011, there is still a wide gender gap in Liberia. Despite women constituting 49 per cent of registered voters, in absence of enforceable affirmative action and lack of proactive timely support for women candidates, only 9 females were elected to the HoR (12.3 per cent).</p> <p>See under section IX "Human Rights", under subsection "Women Participation", pages 39 and 40, para. 3, 4 and 5</p>	<p>Consider modification of legislation (NEL 4, §4.5 and/or enacting of Affirmative Action Bill) and NEC regulations to achieve enforceable affirmative action for women participation and ensure greater representation in decision-making roles within election administration. Implement capacity building for prospective female candidates and measures for higher integration of women in political parties throughout the electoral cycle.</p>	<p>Consider modification and reinforcement of NEL, 4 §4.5; Modification of NEC Candidate Nomination Regulations to include requirement of 30 per cent proportion of female candidates; Consider enacting Affirmative Action Bill for the creation of special legislative seats for women, youth and Persons with Disability.</p>	<p>National Legislature, NEC, Political Parties and CSOs.</p>	<p>Equal right of men and women: "equal right of men and women to the enjoyment of all civil and political rights" ICCPR, art. 3; "Adoption by State Parties of temporary special measures aimed at accelerating de facto equality between men and women" CEDAW Art. 4.1</p> <p>" Review the differential impact of electoral systems on the political representation of women in elected bodies and consider, where appropriate, the adjustment or reform of those systems UN Women's Conference Beijing Platform for Action "</p> <p>" Every individual shall be entitled to the enjoyment of the rights and freedoms (...) without distinction of any kind such as (...) sex (...), social origin (...) or any status "ACHPR, art. 2;</p> <p>" Member States shall take all appropriate measures to ensure that women have equal rights with men to (...) be voted for in elections (...) and to hold public offices ", ECOWAS Protocol on Democracy & Good Governance, art. 2.3;</p> <p>" State Parties shall adopt legislative and administrative measures to guarantee the rights of women ", ACDEG, art. 8.2;</p> <p>"States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights", CRPD, Art. 6.1.</p>



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HUMAN RIGHTS - SECTION XI					
20	<p>Persons with Disabilities are still a strongly disadvantaged group in Liberia. Shortcomings in accessibility of Polling Places is aggravated by the bad state of infrastructure in the country, with a need for re-assessments and further improvements. Although Tactile Ballot Sleeves (TBS), have been provided for facilitating the secrecy of vote for visually impaired and unlettered voters in these elections, their utilization is not yet known to large parts of the possible beneficiaries.</p> <p>See under Section IX on Human Rights, sub section on Participation of Persons with Disabilities, pages 42 and 43, para. 1, 3 and 4.</p>	<p>Further improve access and opportunity of the right to vote for PwDs through measures for better accessibility of PPs, provision of Tactile Ballot Sleeves, and mainstreaming of information on its use in Civic and Voter Education. Consider introduction of mobile registration and the absentee ballot to facilitate voting for persons unable to leave their homes.</p>	<p>Enactment of legislation for reintroduction of absentee ballot (originally provided for in Constitution, Ch. VIII.,80c); Modification of NEL Ch. 5. §5.8 for provision of Tactile Ballot Sleeves.</p>	<p>National Legislature and NEC.</p>	<p>Accessibility, appropriate facilities and materials:</p> <p>“Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for PWDs to vote and be elected, inter alia by: i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; “CRPD art 29 i.</p> <p>Access to information:</p> <p>“Providing information intended for the general public to PWDs in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost “CRPD, art. 21</p>



NO	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
MEDIA - SECTION XII					
21	<p>The legal framework falls short of appropriate regulation in line with international standards with respect to ensuring fair and equitable access by contestants to state controlled media, failing to guarantee a level playing field between candidates.</p> <p>See Section XII "Media and Elections", page 46, para. 8.</p>	<p>Consideration should be given to introduce a legal provision for free airtime to political parties and candidates in the state-owned broadcaster to allow all election contenders to effectively communicate their platforms to the public and contribute to the equal treatment of political parties and candidates. Such time should be allocated in a fair and non-discriminatory manner, on the basis of transparent and objective criteria.</p>	<p>NEC could exercise its power to promulgate regulations including in respect of airtime.</p> <p>The self-regulatory National Media Council, which is responsible for resolving election related complaints of media misconduct, could address the grievances related to the implementation of the regulation for free airtime.</p>	NEC and National Media.	<p>African Union, African Charter on Democracy, Elections and Governance 2007, Chapter 7, Article 17 (3): State Parties shall "Ensure fair and equitable access to contesting parties and candidates to state controlled media during elections."</p>

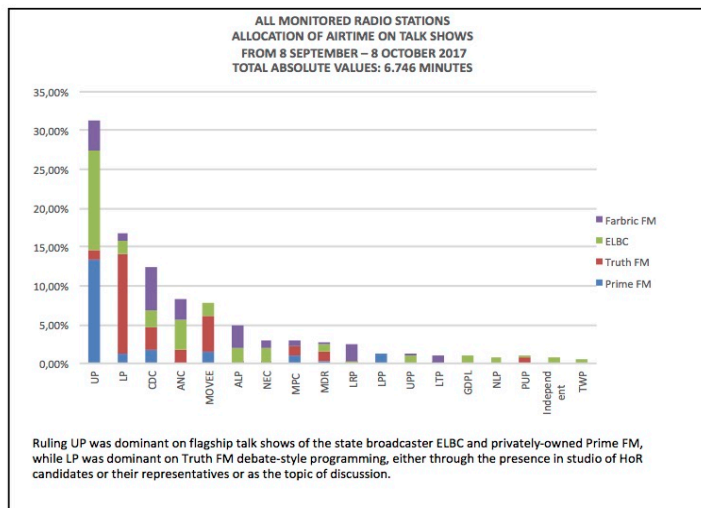
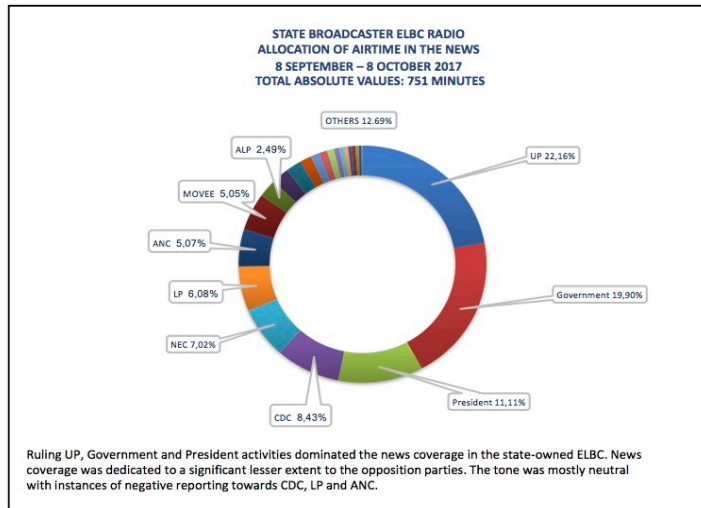


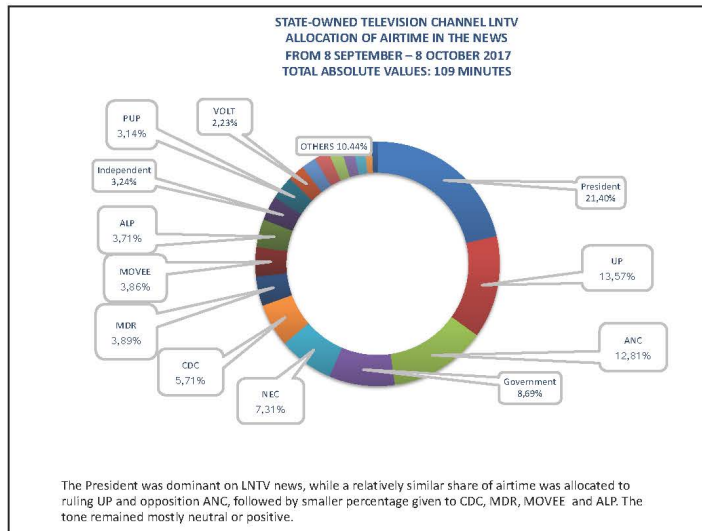
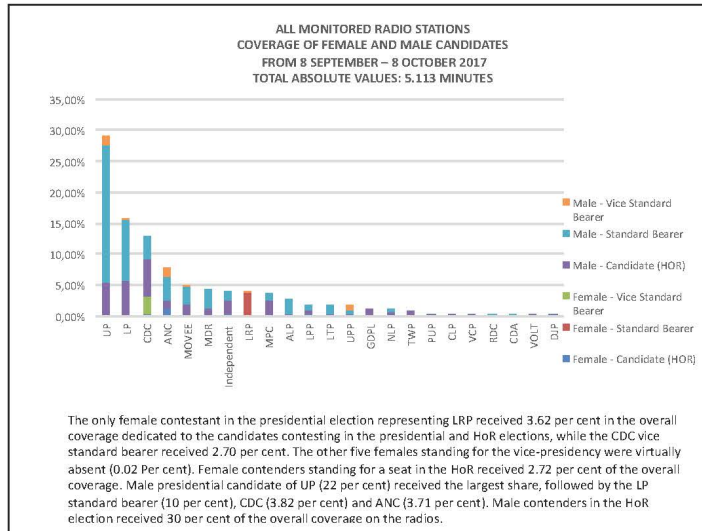
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MEDIA - SECTION XII					
22	<p>A long-standing media law reform process brought a number of draft bills before the National Legislature intended at establishing appropriate regulatory structures with safeguards against government intervention. Those are aimed at creating an independent public broadcaster, an independent broadcasting authority responsible for issuing licenses, and at decriminalising press offences, particularly, libel, by amending the Liberian Penal Law. A policy framework for community media sustainability has been also debated.</p> <p>See Section XII "Media and Elections" under subsection "Media Monitoring Findings", page 47, para. 1.</p>	<p>The preservation of a free media environment is essential to ensuring that Liberia's efforts to safeguard peace and stability and protect fundamental human rights are achieved with success. The government could show its commitment towards this end by implementing a genuine media reform and expedite the promulgation of the draft media legislation</p>		<p>National Legislature and Government.</p>	<p>Declaration of Table Mountain - abolishment of criminal defamation and "insult" laws in Africa.</p> <p>Articles V, VI, VII, XII and XIII, Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October 2002: Banjul, The Gambia.</p> <p>See also ICCPR, 102nd session, Geneva, 11-29 July 2011 General Comment N° 34. Article 19, Para. 16: "States parties should ensure that public broadcasting services operate in an independent manner. In this regard, States parties should guarantee their independence and editorial freedom. They should provide funding in a manner that does not undermine their independence."</p>

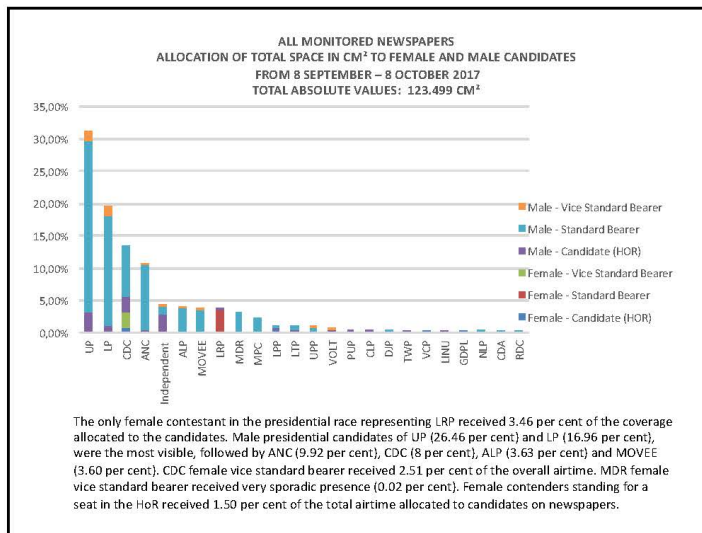
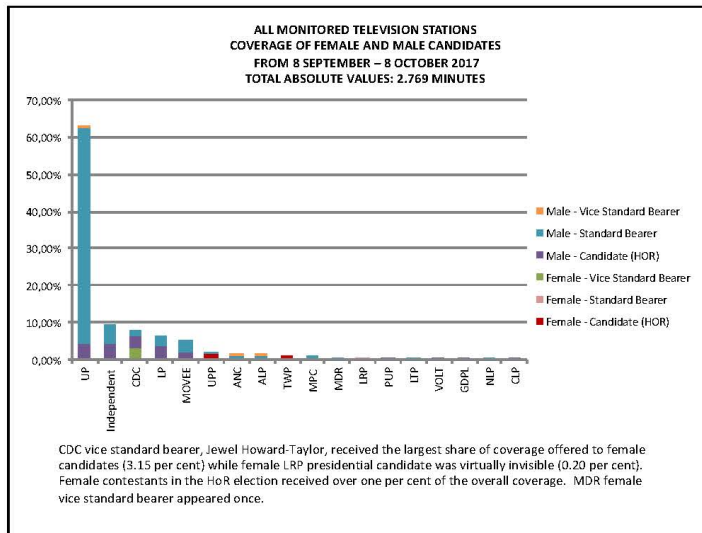


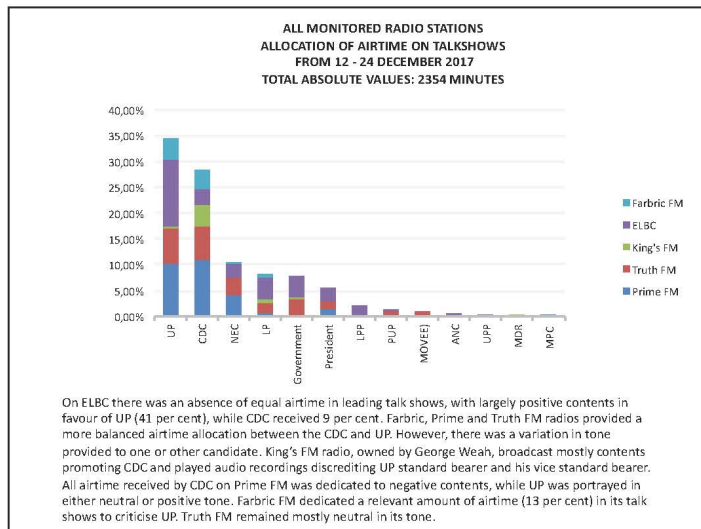
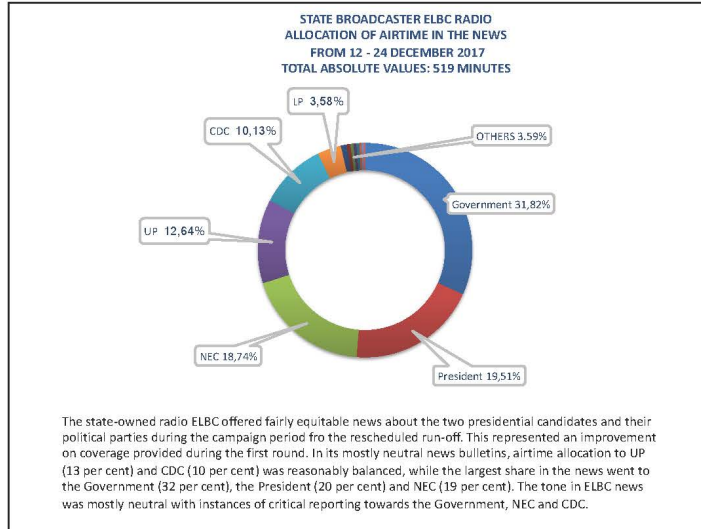
No	CONTEXT (INCLUDING REEF. TO THE REPORT)	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL REGIONAL PRINCIPLE COMMITMENT
CIVIL SOCIETY AND CITIZENS OBSERVERS - SECTION XV					
23	<p>As national institutions progressively take over all aspects of the electoral process, and with the departure of the international election observation missions and UNMIL leaving in 2018, Liberian civil society should take a stronger and stable role in monitoring and reform of the electoral process. For this, especially domestic election observation efforts should be extended until the completion of the current electoral cycle and continue playing the same fundamental role in the next electoral cycle.</p> <p>See Section XV on Civil Society and Citizens Observers', pages 56 and 57, para. 1, 2 and 3.</p>	<p>Consider the extension of domestic observation to the whole electoral cycle and reinforce the role and participation of civil society organisations in the monitoring and reform of the electoral process.</p>	<p>Adaptation of relevant NEC regulations</p>	<p>NEC, CSOs, Domestic Observer Groups and Donors.</p>	<p>National monitoring:</p> <p>“Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.” AU CPCC, art. 12.2;</p> <p>“State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.” ACDEG, art. 22.</p>

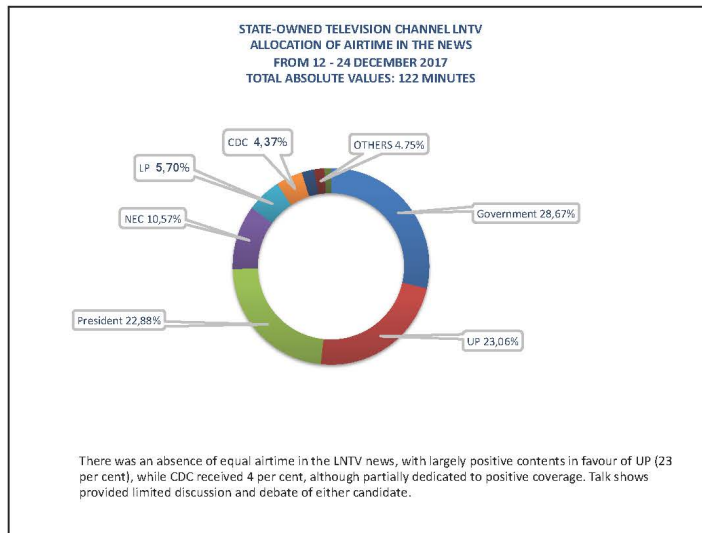
ANNEX 2 - MEDIA MONITORING FINDINGS AND CHARTS













ANNEX 3 - LIST OF ACRONYMS

ABIC-WSR	Angie Brooks International Centre-Women’s Situation Room
ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples’ Rights
ACHRPR-PW	Protocol to the ACHPR on the Rights of Women in Africa
ALP	All Liberian Party
ANC	Alternative National Congress
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
BoC	Board of Commissioners
CBA	Collective Bargaining Agreement
CDC	Coalition for Democratic Change
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPL	Civil Procedure Law
CPRD	Convention on the Rights of Persons with Disabilities
CPRW	Convention on the Political Rights of Women
CRC	Constitutional Review Committee
CSOs	Civil Society Organizations
CVE	Civic and Voter Education
DA	Division of Administration
DPOs	Disabled People’s Organisations’
ECC	Elections Coordinating Committee
ECOWAS	Economic Community of West African States
ED	Electoral District
EISA	Electoral Institute for Sustainable Democracy in Africa
ELBC	Equatorial Latitude Broadcasting Corporation
EU EOM	European Union Election Observation Mission



ES	Electoral Supervisors
FLY	Federation of Liberian Youth
FPTP	First-Past-The-Post
FRR	Final Registration Roll
GC	Governance Commission
HO	Hearing Officers
HoR	House of Representatives
HRC GC	Human Rights Committee General Comment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ID	Identification Card
IFES	International Foundation for Electoral Systems
INCHR	Independent National Commission on Human Rights
IPCC	Inter-Party Consultative Committee
IRC	Inter-Religious Council
KMTV	Kreative Mindz Television
LBS	Liberia Broadcasting System
LEON	Liberia Elections Observation Network
LGTBI	Lesbian, Gay, Bisexual, Transexual and Intersex
LNP	Liberia National Police
LNTV	Liberia National Television
LP	Libery Party
LRC	Law Reform Commission
LRP	Liberia Restoration Party
LTA	Liberia Telecommunications Authority
MEOs	Magistrate Election Officers
MEP	Member of the European Parliament
MICAT	Ministry of Information, Cultural Affairs and Tourism



MoU	Memorandum of Understanding
MOVEE	Movement for Economic Empowerment
NBIS	National Biometric Identification System
NDI	National Democratic Institute
NEC	National Elections Commission
NEL	New Elections Law
NIR	National Identification Registry
NPP	National Patriotic Party
NTLA	National Transitional Legislative Assembly
NUOD	National Union of Organisations of the Disabled
OECD	Organisation for Economic Co-operation and Development
OMR	Optical Mark Recognition
POs	Presiding Officers
PP	Polling Places
PRR	Provisional Registration Roll
PUL	Press Union of Liberia
PUP	People's Unification Party
PwD	Persons living with Disability
RoCFs	Record of the Count Forms
SC	Supreme Court
SMDP	Single Member District Plurality
SMS	Short Message System
TBS	Tactile Ballot Sleeves
TCC	The Carter Center
TCs	Tally Centers
TEEs	Tamper Evident Envelopes
UDHR	Universal Declaration of Human Rights
UN GA	UN General Assembly
UNCAC	UN Convention against Corruption
UNDP	United Nations Development Programme



UNMIL	United Nations Mission in Liberia
UP	Unity Party
VC	Voter Card
VCR	Voter Registration Centers
VP	Voting Precincts
WANEP	West Africa Network for Peace Building
WIPNET	Women's Peace Network



EU Election Observation Mission Liberia 2017

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