



## Carter Center Statement on Liberia's Tally Process and Post-Electoral Environment

### **FOR IMMEDIATE RELEASE**

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### **Executive Summary**

The Carter Center reports that the tally process for the Nov. 8 presidential run-off election was conducted transparently and in general accordance with Liberia's obligations for democratic elections. Tallying was carried out smoothly throughout the country, with greater adherence to procedures and fewer irregularities than in the first round of the elections.

At the same time, The Carter Center notes that the tally process revealed anomalous results at polling places in Grand Gedeh County. While our investigation into these anomalies was inconclusive, interviews by Carter Center observers and analysis of election results raise serious questions about the integrity and transparency of the process in Grand Gedeh. The Carter Center emphasizes that anomalies in Grand Gedeh are not of sufficient magnitude to have a material effect on the outcome of the election as a whole, as represented in the final results announced by the National Elections Commission (NEC) on Nov. 15, 2011.

The Carter Center welcomes the NEC's decision on the Oct. 18 complaint by the Congress for Democratic Change (CDC) alleging widespread fraud in the first round of the elections. Based on a series of hearings, attended by Carter Center observers, the NEC ruled that the CDC had failed to provide sufficient evidence to support its allegations. While noting that best practice calls for complaints to be adjudicated before the holding of a run-off, The Carter Center concludes that this ruling was sound based on the evidence produced and in accordance with the NEC's responsibilities to provide due process. The Carter Center calls on the NEC to resolve all remaining complaints in a timely manner.

The Carter Center regrets the criminal court's Nov. 15 decision on the closure of three media outlets in connection with the CDC rally and subsequent violence on Nov. 7. While the Liberian Constitution permits the government to restrict free speech in emergency situations, no state of emergency was declared on Nov. 7. Additionally, the trial and conviction of the media outlets failed to meet standards for due process and the rule of law. The Carter Center welcomes the court's expeditious decision to permit the media outlets to re-open and notes the government's record of respect for free speech and media freedom. However, this case raises serious questions about the government's continued commitment to these rights, which are crucial for the electoral process and key elements of a democratic society.

The Carter Center launched its election observation mission in early September and observed both rounds of the 2011 elections in all 15 counties. Carter Center observers will remain in Liberia until the end of November to report on the post-electoral environment.

The Carter Center assesses Liberia's elections against its obligations for democratic elections contained in the Constitution, the Elections Law, and other relevant parts of the legal framework, as well as its obligations under international law. The Carter Center conducts its election observation activities in accordance with the Declaration of Principles for International Election Observation, which was adopted at the United Nations in 2005.

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*A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers in developing nations to increase crop production. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.*



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### **Findings on the Tally Process**

Tallying is an integral and important phase of the electoral process that ensures the will of the voters is accurately and comprehensively reflected in the final results.<sup>1</sup> According to NEC procedures, the tally should be conducted at the magistrate level and the results transmitted to the National Tally Center in Monrovia. The tally process at the magistrate offices comprises four steps: (1) intake, (2) copying and distributing copies of the Record of the Count (RoC) form, (3) entering results in the database, and (4) storage of processed materials. The tally procedures for the Nov. 8 run-off election closely followed those used for the Oct. 11 elections.

Observers from The Carter Center and the Electoral Institute for Sustainable Democracy in Africa (EISA)<sup>2</sup> witnessed the tally process at all 19 magistrate offices on Nov. 9-10. Three teams of Carter Center long-term observers remained at magistrate offices in Grand Gedeh, Upper Nimba, and Lower Montserrado Counties until the conclusion of the tally process. Findings include:

- The tally process was carried out smoothly and transparently, with greater adherence to administrative procedures than The Carter Center observed during the first round of the elections. NEC staff at the magistrate offices displayed considerably greater confidence in and knowledge of the tally procedures;
- In some cases electoral materials from a single precinct did not arrive at the same time. For example, some Tamper Evident Envelopes (TEEs), including the TEE3, were delayed in Upper and Lower Nimba and Lower Bong Counties. In several cases, including Upper Montserrado and Margibi Counties, observers reported that TEE3s were not sealed prior to delivery to the magistrate office;
- In all but three cases, photocopies of the RoC form were produced and distributed to party agents and observers in line with the procedures. In the remaining three cases observers reported delays in distributing copies of the RoC form;<sup>3</sup>

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<sup>1</sup> International Covenant on Civil and Political Rights, art. 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, art. 1.

<sup>2</sup> For both rounds of the 2011 elections, The Carter Center and EISA collaborated on briefings and deployed integrated teams of observers. However, each institution issued its own statements on the electoral process.

<sup>3</sup> In Grand Gedeh, party agents did not receive copies of the RoC for each polling place, but instead were issued copies of the Progressive Tally Result. In Maryland County, the copy machine temporarily broke down, but was later repaired and copies were distributed. In Grand Cape Mount forms were not distributed before Carter Center observers departed on Nov. 11, 2011.

- Computational and clerical errors were common on RoC forms, but in all reported cases these were quarantined and corrected in line with the tally procedures. In no case did this affect the total votes obtained by any candidate;
- In several cases, observers reported that small discrepancies revealed during the tally resulted from the number of ballot papers received by the polling places differing from 550. In no observed case did this difference exceed five ballot papers;
- Procedures for entering results into the database were followed in most observed cases. However, as in the first round, in several cases observers reported that the division of duties among magistrate office staff was not strictly followed<sup>4</sup> and that the setup of the magistrate offices made it difficult to observe the process of entering the results to the database. In Margibi County, observers noted that the Record of the Count from the Tally Database form (ET-02) was not displayed after each data entry;
- Observers encountered no CDC party agents during the tally process, presumably as a result of the party's decision to boycott the election. UP party agents were present at many magistrate offices, but in smaller numbers than during the first round of the elections and often for a shorter period of time. Domestic and international observers were present at all 19 magistrate offices. Carter Center observers reported no formal complaints challenging the tally process; and
- Overall, The Carter Center concludes that the tally process was conducted in general accordance with Liberia's obligations for democratic elections.<sup>5</sup>

### **Anomalous Results in Grand Gedeh County**

The Carter Center notes that the tally process revealed anomalous results throughout Grand Gedeh County, including dramatic changes in party support, 100 percent votes for one candidate, and marked differences in turnout at polling places within the same precinct. These anomalies were identified independently by NEC and by Carter Center observers who witnessed the tally process at the magistrate office in Zwedru and conducted interviews with polling staff, voters, representatives of political parties, domestic observers, and other stakeholders in all three electoral districts in Grand Gedeh from Nov. 12-18.

The NEC performs a number of internal checks on results transmitted to the National Tally Center during the tally process to identify potential irregularities.<sup>6</sup> For the run-off, NEC performed a supplemental check to examine variation in the results from the first and second round of the elections. This check revealed concentrations of polling places with significantly higher support for the UP in the second round in Nimba County, where Prince Johnson endorsed the president, and in Grand Gedeh County, traditionally a stronghold of the CDC. In Grand Gedeh the UP received 13,795 votes in the second round, as opposed to 4,514 votes in

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<sup>4</sup> In Upper Nimba several important personnel – including the magistrate and assistant magistrate – were absent for most of the tally process.

<sup>5</sup> ICCPR, art. 25(b).

<sup>6</sup> These checks are designed to identify cases where: (1) the number of votes exceeds the number of registered voters in a polling place; (2) turnout is 95 percent or higher in a polling place; (3) there is a discrepancy between the number of ballots cast and total votes; and (4) one candidate receives 100 percent of the votes.

round one.<sup>7</sup> This represented higher support for UP at 117 of the 131 polling places in the county. Of these, NEC selected and carried out recounts for 11 polling places.<sup>8</sup>

Carter Center observers witnessing these recounts reported no conclusive evidence of tampering, ballot stuffing, or fraud. However, observers reported seeing consecutive ballots with similar markings and a majority of cases in which only two seals were placed on ballot boxes instead of four. Subsequent interviews and investigation revealed that publicly posted RoC forms were removed from many polling places on the night of the election.<sup>9</sup> In addition, observers identified several cases in which results from one polling place differed markedly from results at other polling places within the same precinct, in one case by more than 400 percent.<sup>10</sup> Polling staff at one such precinct interviewed by Carter Center observers strongly implied that these results did not accurately reflect the outcome of voting on election day.<sup>11</sup> Numerous interviews, including with domestic observers, suggested that turnout was substantially lower at many polling places than the figures reported by NEC.<sup>12</sup>

While these anomalies appear to be limited to specific polling places in Grand Gedeh, and do not affect the outcome of the presidential run-off election as a whole, they nonetheless raise serious questions about the integrity and transparency of the electoral process in Grand Gedeh County. The Carter Center urges the NEC and its partners to undertake a close review of electoral administration in Grand Gedeh and, in the event that malfeasance is detected, to take appropriate actions to hold those responsible accountable.

### **Electoral Complaints**

Subsequent to the presidential run-off election on Nov. 8, the NEC issued its decision on the CDC's Oct. 18 complaint alleging widespread fraud – including ballot stuffing and altering results – during the Oct. 11 presidential election. As part of this complaint, CDC requested that the national results for the presidential election be invalidated.<sup>13</sup> The Carter Center has carefully followed the process undertaken by the NEC in the hearing and adjudication of the CDC's complaint; observers attended the complaint hearings and reviewed relevant documents and the written decision rendered in the case.

The NEC hearing officer presided over the hearings, while the CDC, as plaintiff, was represented by legal counsel and the NEC, as defendant, was represented by in-house legal counsel. The CDC requested, and was granted, five adjournments of hearings for various reasons, including the need to gather witnesses. Over the course of the hearings, the CDC and NEC presented several witnesses and final arguments were heard the day before the run-off election on Nov. 7. The decision of the NEC hearing officer was issued in writing on November 10, two days after the holding of the second round.<sup>14</sup> It dismissed the claim based

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<sup>7</sup> While turnout nationally decreased substantially, from 71.6 percent to 38.6 percent, in Grand Gedeh turnout increased in the second round at 18 different polling places.

<sup>8</sup> NEC officials reported that the recounts had not shown any evidence that RoC forms had been altered.

<sup>9</sup> Interviews on November 17 and 18, 2011.

<sup>10</sup> At polling place 15008, Boundary Town Public School, polling place 1 recorded 203 votes cast, while only 47 votes were cast at polling place 2. Similar anomalies can be found at precinct 15020, Zai Public School, where there were 100 more votes cast at polling place 1 than at polling places 2, 3, 4, and 5. At polling place 1, UP received 153 votes and CDC received 0 votes. In the first round of the election at the same polling place, UP received 19 votes and CDC received 110 votes.

<sup>11</sup> Interview conducted on Nov. 17, 2011.

<sup>12</sup> Interviews conducted on Nov. 14, 17, and 20, 2011.

<sup>13</sup> On Oct. 18 the CDC filed an amended complaint in legal pleading format. In CDC's written final argument it contends that NEC's "handling election material contrary to guidelines and regulations" amounted to electoral fraud.

<sup>14</sup> Article 2.4 of the Elections Law provides that the board of commissioners is obligated to decide any questions put before it. A quorum is made up of any five members, including the chairman. The Elections Law does not provide for any

on lack of evidence.<sup>15</sup> As noted in our Preliminary Statement on the Run-Off Election, it is best practice to adjudicate complaints regarding first round results prior to the holding of the second round to ensure the electorate's confidence in, and the integrity of, the elections.<sup>16</sup>

The NEC's conclusion has a sound legal basis. Testimony and photo evidence submitted by the CDC was not sufficient to prove widespread fraud. The CDC's main allegation was that one incident, in which a number of sealed ballots boxes were witnessed being reopened by polling officials after the count, implied ballot stuffing in that case and country-wide. However, its witness testified that she did not actually observe any ballot stuffing.<sup>17</sup> Two NEC witnesses provided credible explanations of the incident testifying that RoC forms had been inadvertently put in two ballot boxes that were then sealed. The records had to be retrieved in order to deliver them to the tally center at the magistrate's office before the boxes were sent to the magisterial warehouse, necessitating opening of the boxes.<sup>18</sup> The NEC further submitted into evidence a tally confirmation report indicating that both RoC forms were delivered intact, in their tamper evident envelopes, to the tally center.<sup>19</sup> No evidence was presented that indicated that these forms had been altered in any way.

The CDC submitted other evidence that it contended was proof of fraud: (1) CDC Secretary General Acarous Gray testified about comments by the NEC chairman that CDC's allegations of fraud were "baseless" and that "nothing would come out of them;" (2) CDC presented two RoC forms (one for a house of representatives race and one for the presidential race) that contained errors; (3) Witnesses testified to two incidents in which ballot boxes were transported without proper escort and were seized by the police and turned over to NEC; and (4) Witnesses testified to police harassment of CDC agents at tally centers for raising issues of irregularities. In its final argument, the CDC speculated that the NEC chairman's letter of Oct. 25 that stated that its candidate was the top vote getter in the first round was further evidence that widespread fraud had been committed.<sup>20</sup>

While the NEC decision in this case recognizes that the testimony of the CDC's witnesses exposes inappropriate handling of election materials, it concluded that it did not establish fraud to any extent. This finding is consistent with the observations and assessment of The Carter Center as reported. Under the law, the CDC has the right to appeal the NEC's decision to the Supreme Court. The Carter Center is aware that the CDC initiated an appeal on Nov. 15 and urges all parties to respect the judicial process and, when issued, the court's final decision in the case.

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secretariat staff, such as Hearing Officers, to make the decisions on complaints. Under the legal framework, the NEC has up to 30 days to adjudicate complaints concerning the results.

<sup>15</sup> Under Article 83 of the Constitution, NEC decisions on complaints can be appealed to the Supreme Court within seven days. In the opinion of NEC senior legal counsel, an appeal to the NEC Board of Commissioners may be required prior to appeal to the Supreme Court, but he notes that the law is unclear in that respect.

<sup>16</sup> Another complaint challenging the first round Presidential election results, filed by Cecilia Ndebe, was dismissed on November 18; the complaint by Gladys Beyan was withdrawn. One complaint challenging the mandate of an elected senator from Nimba County, Thomas Grupee, on grounds that he is not a Liberian citizen was dismissed on November 18. A complaint challenging the citizenship of an elected Legislator in Grand Cape Mount was withdrawn on the same date. Ten other complaints relating to the October 11 election are pending.

<sup>17</sup> When asked on cross-examination how many ballot boxes did he think were broken into, the CDC Secretary General stated, "I do not know the number, but the number goes beyond human imagination."

<sup>18</sup> The CDC witness testified that a polling official had explained to her that the boxes were being opened because something had to be removed from the box prior to transport to the NEC storage facilities.

<sup>19</sup> In its decision, the NEC took notice that the ballots had been counted in full view of the CDC's agents and the records of count placed in TEEs, recorded by the polling staff, and witnessed by party agents and observers. The CDC's agents were also at the tally center to ensure that the results announced at the polls were exactly the same as those included in the tally.

<sup>20</sup> In an apparent clerical error, the results of the top two candidates in the first round were switched in this letter.

## **Independent Commission of Inquiry**

On Nov. 11, President Sirleaf announced the creation of a Special Independent Commission of Inquiry to gather evidence on the events at the CDC headquarters on Nov. 7, 2011. Sister Mary Laurene Brown, president of Stella Maris Polytechnic, was selected to serve as chair. Other members of the commission include Jerome Korkoya, Una Thompson, Augustine Zayzay, and Joe Gbalah. The commission's legal counsel is Konatee Kofa.<sup>21</sup> The commission has publicly called for witnesses to come forward to provide testimony and evidence and has been given two weeks to carry out its investigation.

The Carter Center welcomes the creation of the independent commission but regrets that the process of nominating commissioners has not been transparent. The Carter Center urges the commission to undertake an exhaustive and impartial investigation and calls on the Government of Liberia to make the final list of commissioners public and to swiftly act on the commission's recommendations, so that those responsible can be held accountable.

## **Media Shutdown**

The media play an indispensable role during elections by giving voters access to information that will allow them to make an informed decision. Respect for freedom of expression and of the press is protected in the Liberian Constitution<sup>22</sup> and international law.<sup>23</sup> Any restrictions must be clearly justified, reasonable and objective, and based in the law. The courts play a critical role in the electoral process by ensuring that elections are conducted according to the law and with respect for fundamental rights, including freedom of expression and the press. In doing so, the courts must remain independent of the government at all times, and judicial proceedings must accord with the rule of law, due process, and the principle of transparency.

On Nov. 7, the Liberian Government, through court-ordered police action on request of the Ministries of Justice and Information, closed down three media outlets, including seven radio and television stations.<sup>24</sup> A petition filed by the government in support of the court order alleges the Respondents, as owners and operators of various media institutions, were illegally using these outlets by broadcasting hate speech against the government and deliberately spreading misinformation and messages of violence in connection with their reporting of the CDC boycott and Nov. 7 rally.<sup>25</sup> The station managers were summoned to appear in criminal court on Nov. 10.

The Carter Center raised concerns about the closures in its Preliminary Statement on the Run-Off Election and then closely followed the legal proceedings and reviewed the relevant legal documents and court decision in the matter. The closure of the media outlets and the subsequent court proceedings and decision undermines respect for freedom of speech and

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<sup>21</sup> This list was confirmed by Sister Mary Laurene Brown on Nov. 16, 2011.

<sup>22</sup> Constitution of Liberia, Article 15 states, in part, that "every person shall have the right to freedom of expression...This right shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with this Constitution...[The right] includes freedom of speech and of the press...This freedom may be limited only by judicial action in proceedings grounded in defamation or invasion of the rights of privacy and publicity or in the commercial aspect of expression in deception, false advertising and copyright infringement."

<sup>23</sup> International Covenant on Civil and Political Rights, Article 19.

<sup>24</sup> These outlets include Kings FM Radio, Clar TV, Power FM Radio and TV, Love FM Radio and TV, and Shaita FM Radio.

<sup>25</sup> The petition cites violations of the Elections Law provisions (Articles 10.18, 10.19, 10.24 and 10.25) that have no applicability to media outlets (only political parties and candidates) and do not authorize their closure. Further, the cited provisions prohibit criticism of the electoral process outside of filing an official complaint, which is in and of itself an unjustifiable restriction on freedom of expression.

press freedom, challenges the independence and transparency of the judiciary, and illustrates a failure to guarantee rule of law and due process.

The Respondent's motion that the criminal court has no jurisdiction over the case as it is a civil matter was denied by the court without any legal reference.<sup>26</sup> In the court proceedings, the prosecution cited no criminal provisions or any statutory offense that the media outlets had allegedly violated and did not call any witnesses to give evidence. The court ordered, on request of the prosecution, that the Respondents produce the relevant broadcasts as evidence against themselves, which they refused to do on grounds of their Constitutional right not to self-incriminate.<sup>27</sup> The Prosecutor submitted documentary evidence directly to the court in contravention of due process standards that require all evidence to be submitted through witnesses.<sup>28</sup> The evidence was not viewed or read in open court, as required by due process and to ensure transparency of the judicial system. The judge apparently reviewed the evidence in closed chambers.

In its decision of Nov. 15, the court found the media outlets guilty of an unspecified criminal offense, referring to "hate messages and spreading misinformation having the propensity to cause insurrection and public disorder"<sup>29</sup> and concluded that the closures were legally grounded.<sup>30</sup> The court noted that those types of messages are "not contemplated by the Constitution as freedom of speech and press freedom" though failed to recognize that the Constitution provides that those freedoms "shall not be curtailed, restricted or enjoined by government save during an emergency declared in accordance with the Constitution."<sup>31</sup> In this case, no state of emergency had been declared.

The court ruled the Respondents were subject to penalty but would be spared punishment to ensure that "press freedom prevails." The court ordered the reopening of the media outlets with a "strong warning" that if they "repeat the act which this court has determined to be hate messages and call to insurrection, the Ministry of Information may revoke the permits and licenses issued to Respondents." This decision leaves the media vulnerable to undue discretion of the government to prosecute and revoke licenses, as it does not provide any clear guidance regarding prohibited actions.<sup>32</sup> It could also lead to self-censorship.

The Carter Center recognizes the Liberian government's track record in upholding freedom of expression and media freedom and urges it to reconsider its recent divergent approach in this respect and to continue to guarantee these constitutionally and internationally protected rights in accordance with the law. It is also imperative that the courts resist pressure by the

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<sup>26</sup> Article 15(e) of the Constitution provides that limits on freedom of the press may only be by judicial actions in proceedings grounded in various civil actions.

<sup>27</sup> Article 21(h) of the Constitution of Liberia.

<sup>28</sup> A number of videotapes and newspaper articles were submitted to the court. Rejecting the defendant's motion to refuse the evidence based on violation of due process, the judge noted that he would need the evidence in order to make a determination in the matter.

<sup>29</sup> The messages were apparently given by CDC officials at the November 7 rally and broadcast by the stations.

<sup>30</sup> Under Article 21(c) of the Liberian Constitution and international law, a defendant has a right to know the charges against him or her. The Carter Center was informed by a Liberian legal expert that the alleged conduct is not a criminal offence in Liberia and that any judicial action would have to be civil in nature.

<sup>31</sup> Article 15(a) of the Constitution of Liberia.

<sup>32</sup> This event should be examined together with the firing of the public broadcasters' director during the first round campaign period following the airing of a CDC rally, which led to an almost incomplete absence of the broadcaster's coverage of any opposition party for the remainder of the election period. Additionally, the owner of one of the closed media outlets, Paul Mulbah, was fired from his position as Special Security Advisor for the Liberian National Police while the criminal proceedings were ongoing against the media outlets."

authorities under all circumstances and act independently and transparently, and to deal with all judicial matters in accordance with the rule of law and due process.

The Carter Center also urges the media to undertake responsible and independent journalism, not to allow themselves to be unduly influenced by political actors, and to continue to assert its freedom and obligation to report all news in an accurate, fair and balanced manner. The establishment of a legal framework on media and an independent media regulatory body, based on a fully inclusive and participatory process involving all relevant stakeholders in government, media, and civil society, should be considered.

### **The Carter Center's Election Observation Mission in Liberia**

The Carter Center commenced its observation mission in Liberia in early September 2011 with the arrival of a core team and the deployment of eight long-term observers. For the Oct. 11 elections, The Carter Center partnered with EISA to deploy an integrated Carter Center-EISA observer mission of 55 short-term observers to witness voting, counting, and tallying. The Carter Center and EISA again partnered to deploy an integrated mission of 52 short-term observers to monitor the Nov.8 presidential run-off election.

The objectives of the Carter Center's election observation mission in Liberia are: a) to provide an impartial assessment of the overall quality of the electoral process, b) to promote a process that is credible, transparent, and free from violence, and c) to demonstrate international interest in and support for the upcoming elections. The Center assesses Liberia's electoral process based on its national legal framework and its obligations for democratic elections contained in regional and international agreements, including the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights.<sup>33</sup> The Center conducts its observation activities in Liberia in accordance with the NEC's Code of Conduct for Observers and with the Declaration of Principles for International Election Observation, which was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups.

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<sup>33</sup> Liberia ratified the African Charter on Human and People's Rights (ACHPR) on Aug. 4, 1982, and the International Covenant on Civil and Political Rights on Sept. 22, 2004.