

THE  
CARTER CENTER



August 11, 2020

Hon. Alex Chersia Grant, Chairperson  
House Standing Committee on Elections and Inauguration (HSCEI)  
House of Representatives, Republic of Liberia  
Capitol Building  
Monrovia, Liberia

Dear Honorable Chairperson and Honorable Members of the HSCEI of Liberia's House of Representatives:

The Carter Center was honored to be invited to a hearing to be held on August 12 and 13, 2020, of the HSCEI at the Capitol Building in Monrovia to discuss the draft Act to Amend Certain Sections of the New Elections Law (1986) of the Republic of Liberia. Unfortunately, the current global COVID-19 pandemic has severely limited the ability of Carter Center personnel to engage in international travel, and we, therefore, regret that we are not able to attend this important hearing in person. We hope that you will accept this letter in lieu of our attendance in person, which is submitted with our deepest respect for your nation and the important work of the HSCEI committee.

The Center commends the HSCEI for taking the step to conduct this inclusive hearing to collect additional input. The Center further commends the HSCEI on the current draft, which positively reflects a number of recommendations made by the Carter Center and other national and international election observation groups around the 2017 elections.

*Background on the Carter Center's International Election Observation in Liberia*

The Carter Center has been honored to observe elections in Liberia since 1997, with the Center's broader work to support representative democracy in Liberia dating back to 1991. In 2017 the Center was honored to be invited by the National Election Commission (NEC) to observe those elections. The Center issued a comprehensive final report on its observations and included recommendations to strengthen Liberia's legal framework for elections.

The Carter Center assess elections against international standards for democratic elections contained in the host country's international obligations and commitments and in its national legal framework. The Center conducts its election observation missions in accordance with the Declaration of Principles for International Election Observation, which was endorsed in 2005. The Center's mission for the October 11 presidential and legislative elections was led by H.E. Catherine Samba-Panza, former president of Central African Republic; Jason Carter, chairperson of the Carter Center board of trustees; and Jordan Ryan, vice president for peace programs. The mission included 50 observers from 17 countries and visited approximately 145 polling stations in all 15 counties. The Center's observation mission for the December 26 presidential runoff election was led by Dr. Aminata Touré, former prime minister of Senegal, and Jordan Ryan, vice president of peace programs. That mission included 45 observers from 24 countries who visited 171 polling stations in all 15 counties. The observers around election day collected data on polling, counting, and that added to data collected by the Carter Center's core team of experts and long-term observers.

Over the course of the electoral process, the Center issued eight public statements with observations and recommendations in addition to a comprehensive final report.

## **Carter Center comments on the Draft Act to Amend Certain Sections of the New Elections Law (1986) of the Republic of Liberia**

### *Overarching Comments*

1. The Center further commends the HSCEI on the current draft, which positively reflects a number of recommendations made by the Carter Center and other national and international election observation groups around the 2017 elections.
2. The Carter Center has noted with respect and appreciation the effort through to amend the language to be gender-neutral.
3. The Carter Center welcomes the adjustment to allow submissions for recommended changes from the NEC as well as other organizations in the future. This change is a positive development that will strengthen Liberia's legal framework for elections in the future and allow for broader input.

### *Political Parties and Candidates*

Equitable treatment of candidates and political parties during elections and the maintenance of an open and transparent campaign environment are important to protecting the integrity of democratic election and the right of every citizen to be elected. The right to be elected is a universal right requiring that states ensure that their citizens have the opportunity to stand for elected office, free from unreasonable restriction.<sup>1</sup>

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<sup>1</sup> ICCPR, Article 19(2); ACHPR, Article 13(2)

In its review of proposed amendments that relate to political parties and candidates, the Carter Center noted the following:

1. Political Party Registration. The Carter Center noted the removal of the requirement for political parties to register with the National Election Commission (NEC). It is important that political parties be regulated by an independent body, and the Center has noted in its work around the world that political party regulation is most effective when managed by the independent election management body (in this case the NEC) or by an independent commission established specifically for this purpose. In the absence of an independent commission, such as Sierra Leone's Political Party Registration Commission, the Center recommends that the registration of political parties continue to be managed by the NEC. In the absence of a separate political party act, the removal of the requirement for parties to register with the NEC from the elections law creates a deficit.
2. Nomination Fees. Liberia's legal framework for elections, including the constitution and election law, contains restrictions on the right to stand that could be considered unreasonable, including restrictions based on property ownership and inequitable fees for independent candidates. The proposed changes to the nomination fees in section 7.3 would significantly increase nomination fees and could limit the right of all Liberians to contest elections.

In its observation of the 2017 elections, the Carter Center has further noted that while it is positive that independent candidates are able to stand for election for legislative seats, independent candidates are required to pay inequitably higher nomination fees than candidates from political parties, compromising their rights of political participation.

The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.<sup>2</sup> The effective implementation of the right to stand for elected office ensures that citizens can participate directly in the political process and that voters have a free choice of candidates. International and regional treaties protect the right of every citizen to be elected, subject only to reasonable restrictions. To ensure voters have a free choice of candidates, international standards indicate that any conditions placed on political party and candidate registration processes should be reasonable and non-discriminatory.<sup>3</sup> These conditions apply to age, citizenship, residence, and the holding of public positions, among others, and should not discriminate against candidates based on political affiliation or financial situation.

3. Women's Political Participation.

Liberia is a signatory to a number of international treaties that obligate the government to take specific positive action to ensure the equal participation of women in political life. The Carter Center welcomes the proposed amendments that take necessary steps to bring Liberia's framework in line with international legal commitments and that are responsive to recommendations from international election observation organizations including the

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<sup>2</sup> ICCPR, General Comment 25, para.17.

<sup>3</sup> UNHRC, General Comment 25, paras.15–17.

African Union, ECOWAS, and European Union. The Carter Center strongly recommends that these amendments be adopted as drafted.

- a. The Carter Center warmly welcomes the change to require that political parties submit a list of the party's structure and that within the structure no less than 30 percent of members of the governing body should be from each gender.
  - b. The Carter Center welcomes the addition of the requirement that parties shall have at least one women contestant in each primary.
  - c. The Carter Center warmly welcomes the amendment to (29) Section 4.5 (1) (c) of the New Elections law, which reads "A list of candidates submitted to the commission for an election shall have no less than 30% of the candidates from each gender." If adopted, this amendment will be an important step towards realizing the equal participation of all citizens in political life. The replacement of "endeavor to ensure" with "shall" is an important and welcomed improvement to Liberia's legal framework for elections. The Carter Center also welcomes the enforcement that NEC shall reject any candidate list that doesn't meet the requirements.
4. *Review the 2 percent requirement.* The necessity for political parties to obtain 2 percent of the votes in the constituencies where they contest or be prohibited from participating in the next two elections is an undue restriction on the right to participate in public affairs and is inconsistent with Liberia's commitments under the ICCPR and The African Charter on Democracy, Elections, and Governance<sup>4</sup>. The 2 percent requirement may have unintended consequences on the right to stand for public office.

### *The Independent Election Management Body*

A critical factor in the transparency of an electoral process and facilitating the effective participation of citizens in the democratic process is an independent and impartial election management body.<sup>5</sup> In its review of the components of the proposed amendments that relate to the NEC, the Center noted the following:

1. The Carter Center notes the proposed amendments to the appointment of NEC Commissioners that includes the formation of a panel that would submit short-listed candidates to the President for nomination as an additional safeguard of the NEC's independence.
  - a. In addition, the Center recommends considering the requirement of a supermajority for consent as another mechanism to ensure the NEC is composed of persons who enjoy the confidence of a range of political actors.

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<sup>4</sup> African Charter on Democracy, Elections, and Governance (ACDEG), Article 17 (3)

<sup>5</sup> United Nations, International Covenant on Civil and Political Rights, General Comment 25, para 20. See also ACDEG, Article 17.

2. The Center notes positively the changes to ensure that Commissioners are appointed in a staggered fashion. This will help avoid circumstances where all Commissioners are appointed by one president who may also be a candidate in elections.

### *Electoral Dispute Resolution*

Effective, clear, and fair procedures for electoral dispute resolution are an essential part of a well-functioning electoral process and ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process. According to international standards, individuals are entitled to have decisions affecting fundamental rights taken up by a competent, independent, and impartial tribunal in a fair and public hearing.<sup>6</sup> Expeditious hearings for election matters are necessary to ensure an effective remedy, particularly given the relatively compressed timeframe of electoral processes.

In the Carter Center's review of the components of the proposed amendments related to electoral dispute resolution, we noted the following:

1. The Carter Center notes the positive changes in the competitive recruitment, rather than appointment, of legal staff.
2. The reduction of the time period to submit complaints from 7 days to 2 days as proposed in the amendment to section 5.10 unnecessarily undermines one's right to an effective remedy. While the time period should not be too long, it should also not be so short as to compromise the ability of persons to compile a written complaint, gather any necessary evidence, and travel to the magistrate's office or Monrovia to submit the complaint.
  - a. The amendment to section 5.12(4) which extends the timeframe for appeal of a magistrate decision from 2 days to 5 days is welcome, as is the extension of the time period to appeal a decision by a hearing officer from 2 days to 3 days in the proposed amendment to section 5.12(5).
3. Should the proposed constitutional amendment pass to change the timeframe for elections, the timeframes for the electoral dispute resolution period should be re-examined to ensure that they are well synchronized with other areas of law, including the expiration of terms and swearing-in of government. While it's important to allow all sides sufficient opportunity to present evidence and state their cases, those considerations should not unduly delay the process.
4. Review of the process should include consideration of methods to improve efficiency, such as the appeal of motions in bulk rather than individually.
5. For pre-election complaints, the dispute resolution process should be clarified, and specific time frames established. The NEC should ensure all candidate registration complaints and appeals are adjudicated prior to the start of the campaign period so that the right to due process and appeal does not negatively impact the right to participate in public affairs.
6. In line with international best practice, the legal framework for the resolution of election disputes should consistently require that disputes requesting an annulment of election

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<sup>6</sup> See Article 2.3 of the ICCPR, Article 8 of the UDHR, and Article 7 of the African Charter on Human and People's Rights, Article 17 (2) of the African Charter on Democracy, Elections and Governance.

results (either fully or partially) clearly demonstrate the impact of allegations on election results. While the current election law does suggest that only complaints that demonstrate a possible effect on election results should be filed (Chapter 6), this standard was not consistently implemented around the 2017 elections and should be strengthened in future legal reform.

### *Voter Registration*

In order to meet the obligation of universal suffrage, it is incumbent on countries to ensure that the broadest possible pool of persons entitled to vote are able to exercise that right and that if voter registration is required, it should be facilitated with no obstacles imposed.<sup>7</sup> The Carter Center noted some positive advancements in the proposed amendments that relate to voter registration, including the following:

7. The Carter Center notes the positive development of extending the franchise to eligible members of the diaspora in presidential elections.
8. The updates to the claims and objections process are very positive, including the increased time period and increased public information about the process.
9. The Center notes changes related to voter registration that suggest preparation for a future when Liberia might extract a voter registry from the National Identification Register (NIR). In its final report on the 2017 elections, The Carter Center urged caution and careful consideration of the pros and cons of linking the voter registry to the civil registry.

### *Voting and Counting*

The voting process is the cornerstone of the obligation to hold genuine, periodic elections that express the will of the people.<sup>8</sup> The quality of voting operations on election day is crucial to determining the degree to which an election is consistent with its democratic obligations. Accurate and fair vote counting plays an indispensable role in ensuring that the electoral process is democratic and reflects the will of the voters. In its review of components of the proposed amendments that relate to voting operations, closing procedures of polling stations, and counting the Carter Center noted the following related to voting and the reconciliation of ballot papers:

1. The Carter Center recommends against the proposed change to section 4.8(4e) that would require that all ballot papers be marked with a thumb print. This change seems unnecessary. Other countries in the region have moved away from using thumb prints due to a number of complications, including that the ink often transfers during folding of ballot papers and can make it impossible to determine who the voter intended to vote for. In its observation of elections over time in Liberia, the Carter Center has noted an overall decrease in the number of spoiled ballots. Rather than reverting back a thumb print, which would require procurement and distribution of ink pads, the Center recommends continued voter education on how to mark ones ballot paper.

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<sup>7</sup> ICCPR, Article 25(b); UNHRC, General Comment 25, para. 11, Article 4 (2) ACDEG

<sup>8</sup> ICCPR, Article 25.

2. The Carter Center notes with concern the proposed removal of the language “verifying that the total equals the number of ballots issued to the polling place” from Section 4.12(c). This level of reconciliation at the polling place is an important safeguard of Liberia’s electoral process, and the Carter Center is concerned about its potential removal.

I would once again like to congratulate the Honorable members of the HSCEI for advancing this important election reform process and for holding this hearing to collect additional input. The Carter Center is honored to have had the opportunity to submit these thoughts for consideration with our deepest respect for the Committee's work. Should it be helpful, we are also including here the Conclusions and Recommendations from our final report on Liberia's 2017 elections.

Respectfully,



David Carroll  
Director  
Democracy Program

Attachment: Excerpts from The Carter Center’s Final Report on Liberia’s 2017 Elections