



## PRELIMINARY STATEMENT

### **Election day went smoothly but the entire process was overshadowed by tensions and political attacks on the electoral commission**

**Freetown, 3 April 2018**

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#### Summary

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*This Preliminary Statement is delivered prior to the completion of the election process. It should be read in conjunction with the EU EOM Preliminary Statement issued on 9 March 2018. The final assessment of the elections will depend in part on the conduct of the remaining stages of the election process, in particular, the tabulation of results, and the handling of possible post-election day complaints and appeals. The EU Election Observation Mission (EOM) remains in country to observe post-election developments and will publish a Final Report, containing detailed recommendations, within two months of the conclusion of the electoral process.*

*The run-off election took place on 31 March between the two candidates who received the most votes in the presidential election of 7 March 2018 - retired Brigadier Julius Maada Bio of the Sierra Leone People's Party (SLPP) who gained 43.3% in the first-round, and Dr Samura Kamara of the incumbent All People's Congress (APC) with 42.7%. Together with the vice presidential running mates, all four candidates are men.*

- The main institution administering the election, the National Electoral Commission (NEC) proved its genuine commitment to a transparent and inclusive election, a vital component of democratic consolidation. Contesting candidates and political parties however remained more ambiguous, publicly calling for peace but also fuelling a divisive discourse and unwarranted attacks and demands on the NEC.
- Voting was conducted in an orderly manner during the run-off, with a turnout similar to the first-round. EU observers evaluated the voting phase as 'good' or 'very good' in 98% of 329 Polling Stations (PS) observed. The mission observed counting in 37 PSs, of which 36 were assessed as 'good' or 'very good'; the procedures were transparently and accurately followed. EU observers met party polling agents representing both candidates in practically all PSs visited; domestic observers were also present in the vast majority of PSs. Large numbers of security forces were present, but generally did not interfere with the process.
- The EOM evaluates that the NEC continued to perform its duties in a professional manner in the preparation of, and during, the run-off election at the time of issuing this Preliminary Statement. A number of procedural improvements were introduced as lessons learnt from the 7 March election. The NEC also demonstrated a willingness to accommodate, within reason, changes to the tallying arrangements proposed during negotiations between stakeholders.
- It is of concern that the NEC was subject to politically motivated criticism. All of the major political parties at one point or another alleged unspecified vote rigging in the first-round; they however provided no genuine evidence of significant and systematic problems to support their claims. Furthermore, the NEC was subject to additional pressure with three District Election Officers (DEOs) being questioned by the police and six NEC employees were detained

without charge beyond the 72 hours permitted by law. Additionally, letters which could be seen as interference in the constitutionally protected independence of the NEC were sent by the Inspector General of Police and the Attorney General & Minister of Justice (AGMJ) on the eve of the election.

- After results from the first-round were published, the APC began to object strongly to tallying in the 5 regional centres, demanding instead tallying in all 16 districts. Such a significant change to the 7 March procedures would have been logistically impractical in the time available and therefore appeared to be an attempt to provoke a delay. At a press conference on 17 March, further demands were presented, followed by nearly identical requests in a court case initiated by a former APC candidate. Subsequently, a High Court injunction preventing the NEC from conducting preparations for the run-off election was granted three days before the initial date of the election, and then lifted two days later, with a ruling which further complicated the electoral procedures. This was disruptive of the process and gave the erroneous impression that there were fundamental problems with the NEC's operations.
- The High Court injunction launched a period of uncertainty, which mediation from former African presidents heading observation missions sought to resolve. The election was held four days later than originally scheduled after the Supreme Court extended the deadline. However, regrettably the adjournment of the review of the High Court ruling to after the election day by the Supreme Court left the electoral process unclear and open to legal challenges.
- Between the two rounds of the election, intimidation towards party campaigners and voters increased significantly. While it is acknowledged that the police experience a shortage of resources, this does not fully explain the inadequacy of responses to incidents at times, which led to the perception of bias. In some areas, due to security fears, the opposition party alleged that it was effectively prevented from campaigning. Fear of violence was widespread, but actual acts of violence though more frequent than for the first-round, remained isolated. In the majority of the country campaigning was low-key and door-to-door.
- Regionalism and/or tribalism which was barely present in the first-round became a major factor in the run-off campaign. The presidential candidates issued careful messages regretting tribalism, but their parties had an ambiguous position between public statements and actual practice. The two main political parties exacerbated this negative trend through mobilising both harsh rhetoric and groups of young supporters, which had an intimidating effect in some cases. However, the parties mostly showed restraint in the face of provocations.
- The media coverage of the electoral campaign was, like the campaign itself, low-key. The state-owned broadcaster provided free airtime to both parties as required by the law but in its editorial programmes covered members of the government campaigning for the ruling party.
- Civil society continued to play a constructive role in reminding the parties of their responsibilities. Two aspects in particular should be highlighted: the role that faith, inter-faith bodies and the association of journalists played in seeking to quell the tensions of tribalism, and the important role played by domestic election observers as well as several situation rooms in monitoring the election and also election related violence.

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*The EU EOM was deployed to Sierra Leone on 25 January 2018 following an invitation from the National Electoral Commission and the government of Sierra Leone. The Mission is led by Chief Observer, Jean Lambert, a Member of the European Parliament (MEP) from the UK. In total, the EU EOM deployed over 80 observers on 31 March from 27 EU Member States and Norway across the country to assess the whole electoral process against international obligations and commitments for democratic elections, as well as the laws of Sierra Leone. On Election day, the observers visited over 390 polling stations in all 16 districts of Sierra Leone.*

*The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

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### **Preliminary Findings**

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#### **Post first-round court proceedings created legal uncertainty leaving NEC exposed to challenges and reducing the electorates' confidence in the process**

At least 29 complaints were submitted to the NEC by political parties and independent candidates following 7 March elections.<sup>1</sup> The NEC did not address those complaints individually causing dissatisfaction amongst the complainants.

While over 270 electoral related cases, involving a small number of NEC officials and temporary staff are being investigated nationwide by the Criminal Investigation Department, few of them have reached the courts so far. In the most prominent case, five NEC employees, including the DEO in Falaba, were arrested on 14 March for alleged electoral malpractice and detained until 20 March (well over the 72 hours detention time provided by the Constitution). Despite the fact that the incidents involved electoral offences,<sup>2</sup> the case was firstly dealt with by the Magistrates' Court and not the Electoral Offences Court.<sup>3</sup> So far nine cases have reached the Electoral Offences Court, whose term ends soon unless renewed.<sup>4</sup>

On 24 March, the High Court issued an interim injunction through an unorthodox legal procedure which forced the NEC to suspend its election preparations.<sup>5</sup> On 26 March the injunction was cancelled and the Supreme Court extended the 14-day constitutionally provided deadline for holding the run-off to 31 March. The High Court ruling which included a number of orders to the NEC regulating the conduct of the elections then came before the Supreme Court for judicial review; regrettably the Supreme Court did not hear the case before election day, failing to provide clarity on the process to be followed in the second-round since the orders are open to legal

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<sup>1</sup> 8 APC, 10 SLPP, 3 NGC, 2 C4C, 2 PMDC, 1 ADP, 2 Joint Parties, 1 Independent. They concerned polling agents and observers refused access in PSs, open ballot boxes prior to voting/counting, over voting, failure to provide statement of result, NEC officials interfering with the voting process, voter intimidation, misapplied/misuse of area codes, RRFs not signed by or not given to party agents, results arriving in unsecured brown envelopes instead of tamper evident envelopes (TEEs) and missing ballot boxes, police presence in PSs, etc.

<sup>2</sup> As listed in the Public Elections Act of 2012 (PEA).

<sup>3</sup> False statements and prohibition of interference with electoral materials as provided in the PEA, s.s.122, 123.

<sup>4</sup> The Electoral Offences Court was established on 11 October with a six month term. Reportedly, four cases in Kenema, one in Makeni and four in Freetown have been referred to the Electoral Offences Court.

<sup>5</sup> EP3/18 2018K1 Ibrahim Sorie Koroma v. Chief Electoral Commissioner, NEC and AG, 20 March.

challenges.<sup>6</sup> The NEC declared that the election would be conducted solely according to the Constitution and the Public Elections Act of 2012 (PEA).

### **Despite political attacks, the NEC managed to maintain its independence and performed its duties in a professional manner**

The NEC continued to perform its duties in a professional manner. It amended the polling and counting procedures to prevent or mitigate the shortcomings identified in the first-round, including improved distribution of reconciliation and results forms (RRFs) among party agents and NEC structures. The use of contingency ballots was also better regulated and more emphasis was put in the training of polling staff on filling out RRFs and posting results outside PSs.

Despite this, the reputation of the NEC as a competent institution was considerably damaged in the period after the first-round. The main political parties, disappointed by their worse than expected results, alleged widespread fraud. Yet, they have only been able to produce anecdotal evidence of irregularities related to filling and distribution of RRFs and general claims of intimidation of voters or party agents.<sup>7</sup> This was further compounded by misleading examples of alleged over-voting spread on social media.<sup>8</sup> While the NEC attempted to address these rising allegations, including by conducting numerous recounts, it was not able to respond to individual cases on time, as their focus lay on the expeditious tallying of the four elections.

Prior to the announcement of the presidential election results, the NEC conducted 154 recounts of ballot boxes, in cases where irregularities in results protocols were found at tally centres. Additionally, several dozen ballot boxes were recounted at the request of political parties. In the vast majority of these cases, the recounts either confirmed the original results or clarified some missing data, confirming the credibility of the elections process.

As a result of its own arbitrarily imposed deadline, the NEC made it impossible for the regional tally centres (RTC) to conclude investigations of the last 221 PSs (which had been set aside

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<sup>6</sup> The High Court orders included provision of copies of RRFs to party agents in tamper evident envelopes; manual transfer of results from districts and regions to the national tally centre; possibility for party agents to monitor all transfers of electoral material, presence of security forces inside PSs during counting; the right of party agents to vote in PSs to which they are deployed; provision of serial numbers of ballot boxes before the election and an interpretation of the results collation as specified 'to the letter' of PEA, s.94.

<sup>7</sup> After the close of polls on 7 March the EU EOM observed all phases of the electoral process including intake of the electoral material at all district electoral offices and the tallying in the five regions. While the EU EOM observed some shortcomings, principally related to handling of RRFs, they were of a minor nature without a measurable impact on the results. The tabulated presidential results of a sample of over 200 PSs collected by the EU observers across the country were almost identical to the final results declared on 13 March. The results were further corroborated by the parallel vote tabulation exercise conducted by the National Election Watch on a larger representative sample of over 500 PSs.

<sup>8</sup> The EU EOM found out that these cases were based on a list of polling centres (PC) (available on the NEC webpage for several weeks), in which columns with the number of registered voters were mismatched. The 400 alleged cases of PCs with extreme over-voting included as supporting evidence of electoral malpractice in the court case against the NEC, were also based on the same list. This list had to be used for calculation of turnouts, as the disaggregated results published by the NEC did not include numbers of registered voters.

because of potential irregularities) that were therefore excluded. This may have led to an unnecessary cancellation of valid votes. Due to their geographical distribution across the country, the excluded PSs did not affect either of the two run-off parties disproportionately. To date the NEC has not published details of these cases.

There were reported arrests of temporary NEC staff in Kambia and Freetown. During a recount of the parliamentary election ballots in the Makeni RTC, the DEO of Falaba and four other NEC staff were arrested for alleged manipulation of electoral material in favour of SLPP.<sup>9</sup> The police questioned the district electoral staff in Kambia, Port Loko and Makeni, and later the NEC's executive secretary.<sup>10</sup> As a result, the EU observers reported in virtually all districts an atmosphere of fear and in some cases a reluctance to continue working for the NEC among their staff. Additionally, incumbent President Koroma, who is also the APC chairman, was criticised by the opposition for overstepping his authority and putting pressure on the NEC by summoning the commissioners to a late night meeting to which the SLPP was not invited.<sup>11</sup>

The ruling APC began to question some parts of the voting and tallying procedures which had been set months before the elections at Political Parties Liaison Committee meetings in which they were represented by a high level party executive. The decision to tabulate the results in regional tally centres, rather than in districts, which the APC objected to after the first-round, was reportedly also supported by the APC led Ministry of Finance.

The Constitution protects the independence of the NEC.<sup>12</sup> The High Court orders on 24 March, appeared to infringe on the independence of the NEC by prescribing the technology and the manner in which the tallying should be done.<sup>13</sup> Full implementation of the orders would have required weeks of preparations and considerable additional financial costs. This was repeated in the unsolicited letters by the AGMJ and the Inspector General of Police both of 29 March, which exhorted the NEC to abide by the High Court orders. In reaction to the High Court orders, the NEC revamped the tallying procedures to reflect the prescribed sequence of the certification of election results from the district to regional and up to the national level by means of a parallel tally system. Repeated negotiations sponsored by four African ex-presidents were needed to resolve this crisis as the APC challenged the modified tally procedures both before and after the run-off election.

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<sup>9</sup> The recount of those PSs (5016/02, 5017/03, constituency 39) indeed revealed considerable discrepancies, yet those were the only such cases documented by the EU EOM and did not appear to change the overall outcome of the constituency election. In the aftermath, the NEC ordered a full recount of all four parliamentary constituencies in the Falaba district (i.e. 239 PSs). After the recounts of several dozen PSs did not reveal substantial differences in the obtained votes, political parties observing the recounts gradually stopped turning up which brought the recount process to a halt on 24 March.

<sup>10</sup> For technical reasons, the district level results were certified five days after the final national results had been announced on March 13, yet were also dated March 13. This was the main reason for the police investigation.

<sup>11</sup> On March 19, after the regular meeting of Political Parties Liaison Committee was held at NEC HQ.

<sup>12</sup> Constitution, s.32(11)

<sup>13</sup> PEA, s.7(2) *The Commission may utilise appropriate technology and adopt appropriate approaches in the performance of its functions.*

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## **Campaign affected by fears of violence and increasing references to tribalism**

There was a marked deterioration in the tone and the security of the second-round campaign. Unlike the first-round elections on 7 March, when much of the political discussions tended to be directed towards policies first and personalities of leaders second, in the run-off campaign, issues of regionalism/tribalism dominated. The campaign was more low-key, in part due to a fear of violence, but also due to voters' and campaigners' political fatigue. Most of the campaigning was door-to-door. The campaign calendar which sought to prevent conflict between competing large rallies was made largely irrelevant by the small-scale door-to-door campaigning by both parties which is not regulated by the campaign calendar.

Regionalism, a proxy for tribalism in Sierra Leone, was used to denigrate the choices of voters. It was suggested that the reason why many in the South voted SLPP, and to a lesser extent in the North why many voted APC, could be explained by tribal and regional affiliations. Although in public, the candidates condemned this negative trend, there is no evidence of action taken against members of their parties who engaged in such tribal based campaigning. The incumbent president failed to condemn this trend of intolerance either sufficiently early or strongly.

The use of geography and ethnicity as a presumed predictor of political affiliation was associated with several acts of violence and harassment in the North and North West against people originally from the South who were singled out because they were presumed to be SLPP supporters. There were also cases, though fewer in number, in the South of people coming under pressure due to their assumed support of the APC based on their northern origins. Further, ethnic Northerners living in the North who supported opposition parties in the first-round were accused of 'treachery' to their tribe/region. There were fewer reports of this problem in the South.

This abuse of regional and tribal identity had the potential to spiral out of control, but civil society organisations (CSOs), the Political Parties Registration Commission in the districts, chiefs, the police and the Office of National Security were able to reduce tensions through mediation in many cases. Despite examples of divisive language and actions by some, restraint was shown by the majority of politicians and party activists, who made it clear that they deplored discrimination based on regional or tribal origin.

There were a number of trouble spots in the second campaign.<sup>14</sup> There were serious attacks including alleged murder attempts made on several MPs elect, political candidates and party activists.<sup>15</sup> According to numerous sources, including the police, the majority, but by no means all of the violence and threats, came from APC supporters. Despite this, there were some districts in which there were few or no reported problems.

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<sup>14</sup> For example in a village in the North of Kambia, it was reported to the EU EOM observers that voters were told that if any member of the community voted for SLPP, the whole village would be burned. In parts of Bombali and Tonkolili, the SLPP claimed that they were unable to campaign due to intimidation. There were violent clashes between the two parties in Bo.

<sup>15</sup> The successful SLPP candidate for the Lumley constituency (Western Area, Urban) was hospitalised in an attack blamed on APC supporters, on the other hand the defeated APC parliamentary candidate in Waterloo (Western Area, Rural) was attacked in an incident blamed on SLPP supporters.

The victims of violence and intimidation often complained of insufficient and sometimes inappropriate policing.<sup>16</sup> It was apparent that during the entire electoral process, there were a number of key changes in the Local Unit Commanders reflecting in some cases, it is alleged, political interference by the incumbent government. Limited police resources were stretched by the number of politically motivated or at least politically exacerbated threats and crimes. Nevertheless, the security forces played an effective role in restoring order and generally deterring further acts of politically motivated criminality.

There continued to be observed instances of abuse of incumbency advantage; government vehicles with covered licence plates were misused by ministers to campaign. Private businesses with government contracts (for example road construction companies) were reported to be funding the APC campaign. Soldiers in uniforms and civil servants were observed accompanying the APC campaign.<sup>17</sup>

### **Derogatory language in the media contributed to fuelling regional tensions**

While the two main parties were given equitable media coverage, overall, the media provided less attention to the second-round campaign, in part because the campaign was low-key.<sup>18</sup> On the other hand, the media widely covered allegations of electoral malpractices by the NEC as well as clashes between APC and SLPP supporters which resulted in rather negative portrayals of both parties and the NEC as compared to the first-round.

The use of regional and tribal rhetoric in some local media was reported to the EU EOM long-term observers in the regions. It was sometimes amplified in the social media and particularity via WhatsApp groups; this regrettable trend was not noted prior to 7 March. The calls from civil society and international partners to refrain from derogatory language along tribal lines which could increase tensions were also widely covered by the media.

The state-owned national broadcaster, SLBC gave both of the political parties an equal amount of free airtime as required by the law.<sup>19</sup> On the other hand, SLBC TV allocated 50% of its coverage of elections in editorial programmes to APC, 24% to SLPP; the remainder of the time was dedicated to views of other political parties.<sup>20</sup> On SLBC Radio, SLPP received 41% of editorial coverage, APC 36%. In addition to the time devoted to the APC, SLBC TV allocated 7% (and SLBC Radio 5%) of their editorial coverage to government ministers campaigning; blurring the lines between their roles as state official and politicians.

The private broadcaster AYV TV allocated 44% of its coverage of the election in editorial programmes to APC and 39% to SLPP. AYV Radio devoted 21% to SLPP and 18% to APC. Radio

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<sup>16</sup> For instance, this included multiple cases of SLPP campaigners who were victims of stabbings being arrested by the police rather than being given immediate medical care.

<sup>17</sup> For instance, two soldiers were assigned to the managing director of a road construction company who was distributing money for the APC campaign in Kono.

<sup>18</sup> Also, APC and SLPP used paid advertising in the broadcast media almost equally.

<sup>19</sup> PEA, s.156(2) provides for equal airtime of a minimum of 30 minutes during the electoral campaign to be provided to all political parties and candidates who request it. Both parties were allocated 60 minutes each.

<sup>20</sup> Monitoring period: 15 to 25 March 2018. The editorial programmes monitored included news and talk shows.

Democracy allotted almost the same amount of airtime to APC and SLPP, 34% and 33% respectively. Of the two newspapers monitored, Awareness Times allocated 57% of its election coverage to SLPP while giving 32% to APC. Awoko newspaper was more balanced and allotted 29% of coverage to APC and 28% to SLPP.

One case of intimidation of journalists of Kambia based radio station Kolenten was reported to EU EOM observers.<sup>21</sup> On election day, there were two separate attacks on newspaper journalists in Freetown reported by the Sierra Leone Association of Journalists (SLAJ).

### **Civil Society played a positive role in promoting national cohesion**

The role of civil society organisations such as the Women’s Situation Room, WANEP and many others in reminding the political parties of their responsibilities to both preach and practise non-violence was important. They, along with faith and inter-faith groups, as well as the SLAJ played an important role in highlighting to politicians and the general public the dangers of discrimination on the basis of tribal or regional origins. National Election Watch (NEW) not only observed the election day, but also increased confidence in the entire preparations by observing the distribution of sensitive and non-sensitive materials necessary for voting.<sup>22</sup> For 7 March elections, the results of their parallel vote tabulation exercise, based on a random sample of PSs, confirmed with a high degree of precision the integrity of the official presidential elections results in the first-round. The NEW repeated the exercise in the run-off.

### **Election day voting and counting conducted efficiently and peacefully**

The NEC coped professionally with the four-day postponement of the election, as demonstrated by further improvements of the administration of voting in the run-off election. EU observers were present for opening procedures in 42 PSs all of which started on time or with only short delays. Agents of both candidates followed the process in a largely unobtrusive manner in the 329 PSs observed by the mission during voting. Domestic observers were seen in 87% of PSs visited.

The EU observers evaluated the voting phase as ‘good’ or ‘very good’ in 98% of PSs visited. Due to the less complicated process of voting between only two candidates, voters were processed more efficiently. Polling procedures were followed and voters could cast their votes in secret and without undue influence.

The votes were counted transparently and according to the procedures in the 37 PSs observed across the country. The presiding officers handled filling out of RRFs and their correct packing in

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<sup>21</sup> Intimidation and pressure on journalists was reported by Radio Kolenten which arose after the community radio station refused to sell APC more time than the radio station was prepared to allocate. APC officials allegedly came to the radio station escorted by a gang. Following this, the station asked the police for protection, which was granted.

<sup>22</sup> However, Common Cause, a group claiming to be observing election, requested 4,000 accreditations. It appeared to be a front organisation for the APC, blurring the lines between party polling agents and genuine CSO-based domestic observation.

a confident manner, and better than in the first-round. Yet in a fifth of the observed PSs they appeared to have some minor difficulties. In practically all PSs observed the results were posted outside and copies of RRFs given to party agents.<sup>23</sup> The conduct of counting was assessed as 'good' or 'very good' in 97% of the observed PSs. Armed security personnel were seen in 5 PSs.

Observers noted the presence of security forces, including military, during transfers of election material and in polling centres throughout the election day and night. They were seen in the majority of cases to fulfil their tasks correctly without interfering with the process. A few incidents of violence including the stabbing of several SLPP members at Lumley in Freetown as well as two arrests of polling staff due to alleged electoral malpractice were reported to the mission. The unexplained, but apparently deliberate, nationwide disconnection of the internet and international telephone lines for 8 hours on the night of 31 March posed a threat to freedom of expression.

### **Tallying delayed**

On election night and the following days the EU EOM observed the intake of RRFs (and other electoral material) from PCs in all district electoral offices. In this phase, the DEOs verified the integrity of the tamper evident envelopes containing results forms before dispatching them to the regional tally centres. EU observers assessed the intake process as transparent and well managed. In 90% of observations party representatives and national observers were present.

The actual collation of results started on 1 April, but only in Freetown, because the other four regional tally centres remained on hold due to APC's objections to the previously agreed procedures. In a series of negotiations with the NEC, before and after the election, the APC insisted on tallying disconnected from any electronic networks and conducted at district rather than regional level. In order to move forward, the NEC proposed to introduce an additional off-line spreadsheet tallying procedure, parallel to the existing tally system with the latter having precedence in case of discrepancies. The SLPP disagreed with the last minute changes. In a meeting mediated by the African ex-presidents leading election observation missions on 2 April, both presidential candidates eventually agreed to the NEC's compromise solution and pledged not to further undermine or disrupt the results process before its conclusion. The tallying began with a 30-hour delay.

The EU EOM will be following the collation of results in the five regional tally centres until its conclusion. The EU EOM encourages the NEC to immediately publish detailed results from every PS including the number of invalid votes from the run-off election.

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This Preliminary Statement is available on the Mission website: [www.eomsierraleone2018.eu](http://www.eomsierraleone2018.eu)

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<sup>23</sup> A sample of more than 1200 RRFs from across the country collected by EU observers indicated a turnout similar to the 7 March election at around 80%.