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ELOG Statement on the Prevailing Electoral Environment

(Nairobi, October 16, 2017): Since the Supreme Court of Kenya (SCoK) annulled the presidential elections on September 1, 2017 and directed that new elections be held within 60 days of that date, a number of events and political activities have taken place whose sum total could potentially put the electoral process into a tailspin. As a platform for domestic election observation, representing and defending citizens' interest in electoral processes, the horrendous challenges posed by the prevailing political and electoral dynamics are of grave concern to us.

First, after the IEBC unilaterally appointed October 17, 2017 as the initial date for the fresh elections, the need for comprehensive and careful preparations in light of the Supreme Court ruling coupled with mounting pressure from stakeholders for greater consultations and dialogue, compelled the Commission to eventually defer the election date to October 26, 2017.

Over the same period, ELOG has observed that political grandstanding and brinkmanship mainly by the Jubilee and NASA politicians has continued unabated consequently heightening tension and anxiety and generating a poisoned and polarized political and electoral environment in Kenya.

Events subsequently culminated in the withdrawal of the ODM (NASA Coalition) presidential candidate Rt. Hon. Raila Amolo Odinga from the scheduled election, an action that while within the remit of the Constitution and laws in the country, has further raised the political temperatures in this unprecedented electoral environment.

In regard to these developments and considering the emerging scenarios of uncertainty, ELOG as a domestic election observer group is concerned that the situation could worsen unless a number of crucial interventions and steps are taken by key players to properly manage and guide the now murky political and electoral process.

Having observed the electoral process closely for the last seven (7) months ELOG would like to make the following statements;

1. The Independent Electoral Boundaries Commission (IEBC) should quickly seize the moment and provide **Strategic Leadership** as an independent institution, constitutionally mandated to manage the electoral process and give clear and authoritative directions on the way forward in light of the prevailing circumstances. ELOG has observed that the electoral process has been hijacked by political players, who on the basis of their selfish political agenda, have served to create political confusion, division and hostility and taken the country and citizens hostage.
2. Amidst the emerging constitutional and legal confusion, the IEBC should at once petition the courts to give meaning, clarity and certainty to the myriad of legal intricacies and intrigues that now surround the holding of the fresh presidential elections. This will enable the IEBC to provide clear, unequivocal and predictable path towards the fresh elections.
3. As the IEBC and stakeholders prepare for the fresh elections, it is imperative that the challenges and issues that led to the nullification of the initial presidential elections are fully and effectively addressed. Addressing the challenges and issues completely and in a manner acceptable to all stakeholders, will promote public trust and confidence in the IEBC and the electoral process. Further, the IEBC should put in place a robust public outreach and information campaign to enable broader public understanding and buy-in to the preparatory corrective measures being undertaken before the next elections.
4. While ELOG views electoral reforms as a progressive process, ELOG urges all stakeholders to be mindful of the fact that public trust and confidence in the electoral process and in electoral laws is enhanced through open, participatory, accountable and transparent processes. ELOG further urges stakeholders to be mindful that rushed, partisan and selective reform of the electoral legal framework barely a week or so to the scheduled fresh elections undermines the very essence of democracy and good governance and serves to alienate segments of electoral stakeholders.

5. ELOG underscores the need for elections that are as inclusive, accommodative and legitimate as possible. Kenya's electoral system is founded on the principle of universal suffrage as anchored in Article 38 (2) of the Constitution hence where one constituency in the electoral process feels aggrieved enough to withdraw from the process, the IEBC should reflect deeply and consider ways and means possible to address the grievances raised and accommodate the aggrieved party to the extent possible. This is the only way to ensure that the electoral outcomes are legitimate and acceptable to all stakeholders and the citizenry. The onus is on the IEBC to demonstrate its independence, neutrality and impartiality in addressing any issues raised by the electoral contestants in respect of the elections and amicably settle the same.
6. ELOG has observed that the hardline positions taken by the main political actors are not helpful in creating a conducive atmosphere for conducting peaceful, credible, free and fair elections. This has not only succeeded in escalating tensions and heightening anxiety in the country but has also contributed to a social and economic paralysis, which has adversely affected the economy and daily lives of millions of Kenyans. ELOG recommends that the IEBC should immediately spearhead frequent multi-sectorial engagements and broad-based consultations and dialogue with key actors to build sobriety, tone down temperatures and expectations and build necessary consensus.
7. ELOG has also observed instances of breach of law and public order by protestors including incidents of violence and destruction of property across the country. ELOG has also noted instances of police brutality, use of excessive force and abuse of human rights targeting demonstrators across the country, especially in Kisumu, Siaya, Kakamega and Nairobi. While ELOG does not condone violent protests, destruction of property and looting by protestors, ELOG condemns the police brutality, use of excessive force and abuse of human rights by the police during demonstrations that has resulted in both protesters and non-protesters being battered, teargassed and shot. ELOG urges the relevant government authorities and the police to enforce the law in a non-arbitrary manner and with extreme restraint. In the event that demonstrators engage in criminal acts, the police should act in accordance with the law by arresting the suspects for prosecution. Political parties

should also encourage their supporters to engage in peaceful protest as protected by the Constitution of Kenya 2010.

8. ELOG urges the Office of Director of Public Prosecution to quickly move to apprehend political inciters and hate speech mongers as required by the Electoral Offences Act and other relevant laws of the country. Legal action on criminal acts perpetrated by politicians should be quick and swift as a deterrent mechanism.
9. We appeal to our colleagues in the Civil Society and the religious community to robustly engage and support efforts towards ensuring a credible, peaceful, free and fair electoral process. At this juncture of a protracted electoral process, all action should be harnessed towards seeking progressive solutions that are canvassed through wide consultations and broad-based dialogue.
10. The Kenyan media has greatly contributed to ensuring that the public is kept abreast of the electoral process happenings through infomercials and interactive talk shows. ELOG recommends that while this is commendable, the media ought to move further and demonstrate a duty of care to Kenyans by taking every effort to ensure that politicians and other individuals do not use media platforms to spread fear, ethnic hatred and despondency in the country.

Conclusion

Elections should be seen as a peaceful transition mechanism rather than a cause of tension. The 2017 presidential electoral processes have taken an unprecedented trajectory that has raised the threshold on the management and conduct of elections not only in Kenya but also beyond. Kenyans have an opportunity to emerge from this process as a leading example and beacon of hope for progressive electoral democracy in developing countries, especially in the African continent.

However, if the political and electoral quagmire is not properly managed, the opportunity could be lost and could lead to a political crisis that could in turn degenerate into a protracted political and civil strife that will without doubt undermine the constitutional, democratic and governance demarches that Kenya has made over the years.

ELOG reiterates the need for elections that are truly democratic and legitimate. These can only be realized when a conducive political and electoral environment is cultivated. This in turn requires peace building and inclusivity and participation of all stakeholders

As Kenyans, we should all continue to strive for a government and a country based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

GOD BLESS KENYA!

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