

HAVE KENYANS SPOKEN?

ELOG STATEMENT ON OCTOBER 26TH FRESH PRESIDENTIAL ELECTION

1st November, 2017

BACKGROUND

On the 26th October 2017, IEBC conducted fresh presidential election as directed by the Supreme Court which annulled the August 8th 2017 election and directed that another presidential be conducted within 60 days of the ruling. A protracted tense political environment ensued thereby creating a toxic pre-election environment that spilled over into the election.

In its statement, on the 16th October 2017, ELOG pronounced itself on a number of issues pertinent to the preparations for the fresh election. Key among these issues was the *need to address the political brinkmanship that had polarized the country since the first election especially between the two leading contenders: NASA Coalition and Jubilee Party*. ELOG also implored the IEBC to show leadership in the process by first putting its house in order and then seeking advice from the Supreme Court on whether, given the prevailing politico-legal environment, it was feasible to conduct the fresh presidential election as scheduled. It highlighted the need for inclusivity and transparency in the election preparations, the excessive use of force by the police service on demonstrators, the breach of law and public order by demonstrators, and the need for a broad-based dialogue amongst the political players.

Unfortunately, many of the issues raised by ELOG before the election were not effectively addressed and as a result Kenyans went into the fresh elections in a cloud of uncertainty, tension and apprehension. Indeed, in two previous statements, the first on the pre-election environment and opening of polls, and the second one on the voting, closing and counting processes, we observed that the election had *amplified the divisions of the country's society and body politic*.

The election was also characterized by violence that led to deaths in Nairobi, Busia, Migori, Kisumu and Athi River where police clashed with protesters on the E-Day. An atmosphere of fear and trepidation was also noticeable in many of the cosmopolitan areas around the country.

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The unfavorable political environment was further aggravated by the apparent lack of trust in key institutions that would otherwise ensure that the election was conducted in a credible manner. IEBC was under constant attack especially by the opposition which later withdrew from participating in the election. The Police also came under a severe criticism owing to their excessive use of force on un-armed protesters that, among other things, resulted in the death of over 60 Kenyans and 60 reported cases of SGBV according to reports shared by KNCHR, Amnesty International, Physicians for Human Rights and Human Rights Watch. Despite the historic decision to annul the initial presidential results, the Judiciary attracted criticism when a last ditch attempt to stop the elections by three petitioners was technically thwarted by an apparent lack of quorum by the bench that constitutes the Supreme Court on October 25th.

The above issues notwithstanding and with the Fresh Presidential Election officially confirmed by the IEBC, ELOG deployed observers to document and report the e-day processes.

ELOG MISSION FOR THE FRESH PRESIDENTIAL ELECTION (FPE)

Principles of Observation

As earlier stated, ELOG subscribes to the international election observation and monitoring standards which demands that observers remain non-partisan, impartial and politically neutral in assessing and evaluating electoral processes in the country; as well as, in conducting election observation and monitoring for the benefit of the country.[1] Additionally, ELOG is also guided by paragraph 10 of the DOGP which notes that:

“The decision by citizen organizations to observe and/or monitor an election or any element of it does not indicate that the organizations either presume the election process to be credible or to lack credibility;”

ELOG’s observation of the October 26, 2017 presidential election is, thus, premised on the principle that non-partisan, election observation and monitoring by citizen organizations seeks to evaluate the process and its elements accurately, impartially and as systematically as practicable in order to properly characterize processes according to national legal requirements and applicable international obligations and commitments. [2]

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Long Term Observation

ELOG observed the petition process which culminated in the annulment of the August 8th Election and further deployed the long-term observers (290) during the election week when the fresh presidential elections were held. Some of the findings from these processes are shared in the report.

Further, ELOG conducted an assessment of the Voter Register using logical tests to determine the veracity of the data and voter details. This was the first phase of a comprehensive independent audit of the voter register. The second part which will mainly feature field surveys using the ‘people to list’ methodology will be done in the next phase of our long term observation. The findings of this first phase have been shared with the IEBC and other stakeholders and they form part of our summary findings in this statement.

E-Day Observation

The political environment described above, especially the compromised security situation, informed ELOG’s deployment strategy. ELOG deployed 2,196 observers who were confirmed to have observed the process on E-Day. These observers were deployed in all parts of the country apart from Busia, Bungoma, Vihiga, Kakamega, Kisumu, Migori, Homa Bay, Siaya, Nyamira and Kisii Counties. The major reason for this was insecurity. Indeed, three ELOG observers in Nyali, Kibra, Kilifi and Ruaraka constituencies came under attack and had to be withdrawn for their safety.

Further, ELOG could not effectively deploy in Turkana as a result of heavy rains that affected the training of the recruited observers.

Mission Objectives

The ELOG observation mission was premised on three objectives that were largely informed by the Supreme Court ruling that annulled the initial election and directed a new one to be held in within 60 days.

The mission objectives were to assess;

- Whether the fresh presidential election was conducted in compliance with the Constitution and the relevant electoral laws.
- Whether the IEBC was competent in managing and conducting the fresh presidential election.

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- Whether there was transparency and inclusivity in the conduct of the election.

In this regard, therefore, ELOG deployed 766 Sample-based observers, 517 General Observers, 408 Tallying Centre observers, 290 Long Term observers and 215 General observation supervisors. This made for a total of 2, 196 observers.

SUMMARY FINDINGS

In our previous two statements, we gave statistics on what our observers were able to note on the opening, voting, closing, counting and transmission processes.

Observation Analysis

Our observers in sampled polling stations observed the opening and setup of the polling stations. This statement is based on Observation and Incident Reports filed as of 26th October 11:30 am by ELOG observers.

Opening and Set-up

- 80.7% of the polling stations observed opened on time. The remaining stations opened between 7:00 am and 8: 00 am, with some opening after 8:00 am.
- In 99.9 % of polling stations observed, the ballot boxes were shown to be empty before being sealed.

Voting Process

- In 4.8% of the stations, the KIEMS failed to function properly while in 28.8% of polling stations observed, some people (i.e., 1 to 25) or many people (greater than 25) were not permitted to vote.
- In 57.8% of the stations observed, at least one person was identified alphanumerically not biometrically by the KIEMS device. In 15.7% of polling stations, many people (i.e. 25+) were assisted to vote.
- Our observers reported that there was a print out of the data contained in KIEMS which was used to verify voter information. This was not present during the 8th August Elections.

Counting Process

We have also concluded our analysis on the counting process. The following are some of ELOG's findings on the closing and counting.

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- In 99.1 % of the stations observed, ballots box seals were intact before counting began. In 1.7% of stations observed one or more political party agents requested a recount of the presidential ballots.
- A copy of the presidential results form (34A) was publicly affixed outside in 95.4% of the polling stations observed.
- In 94.8% of the stations, observers witnessed the presiding officer scan and send the presidential results Form 34A through the KIEMS kit and receive a confirmation message.

Constituency Tally Centre Observation Findings

The following are ELOG's findings on the Constituency Tallying Process from 208 constituencies across the country with the exception of Nyanza and Western regions:

- In 2.9% constituency tallying centres observed, the tallying process was postponed, disrupted or halted at some point.
- In 2.7% of constituency tallying centres observed, there was an attempt to harass or intimidate election officials during the tallying process.
- In 88.2% of constituency tallying centres observed, observers witnessed the input of Presidential results Form 34A results into the computer spreadsheet by the Returning officers.
- In 99.5% of constituency tallying centres observed, no party agents filed a written complaint regarding the constituency tallying process.

Closing Process at the Constituency Tallying Centre:

- In 98.6% constituency tallying centres observed, all polling station results forms (Form 34A) were tabulated before the Returning Officer filled out the collated results Form 34B.
- In 96.9% of constituency tallying centres observed, a party agent was present for the signing of the Collation of Presidential Results Form 34B.
- In 99.5% of constituency tallying centres observed, the Returning Officer stamped the Collation of Presidential Results Form 34B.
- In 95.7% ELOG constituency tallying observers witnessed the Form 34B being scanned and sent electronically to the National Tallying Centre.

Results Transmission

Of the polling stations observed by ELOG, 94.5% of observers reported witnessing the Presiding Officers scanning and sending the Presidential Results Form 34A through the KIEMS kit and receiving a confirmation message. As mentioned above, the majority of constituency tallying centre observers – 95.7% - also witnessed the electronic transmission of

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the collated results Form 34B.

While the transmission of the 34As was fast the absence of rolling aggregate provisional results at various electoral jurisdictions and lack of transparency in the process was questioned.

Comparison to 34As on the IEBC's Website

In addition to observing the quality of the process at polling stations, ELOG observers requested copies of the Presidential Results Form (34A). ELOG observers collected 540 images of forms 34A in order to compare them to those posted on the IEBC's Forms site (<https://forms.iebc.or.ke>). The following observations were made:

- 536 out of 540 images of the forms on the IEBC portal were legible.
- 7 out of the 536 forms did not have the official IEBC stamp
- 1 out of the 536 forms was not signed by the presiding officer

ELOG compared 522 of the forms collected to forms posted on the IEBC Forms site. The figures for the candidates in the ELOG copies matched the figures in the corresponding IEBC form in 521 cases.

However, there was one case where the figure for Mr. Uhuru Kenyatta in the ELOG form was 86 and the figure in the IEBC form 286. This was the polling station 01 in Bolargy Primary School located in Garissa Township.

Voter Turnout

As ELOG already noted in its previous statements, turnout on the 26th October 2017 was very low. In large parts of the country many voters stayed away. ELOG was unable to deploy observers comprehensively across the country and, therefore, cannot give a reliable projection of the voter turnout.



Assessment of the Voter's Register- Logical Computer Test

SUMMARY OF ELOG FINDINGS POST KPMG AUDIT

		Findings By ELOG	Findings By KPMG
1	Total Registered Voters	19,611,423	19,646,673
2	Number of ID/Passport that have Duplicates	81,024	93,548
3	Duplicated ID/Passport Records Plus Surplus Records	169,646	197,677
4	ID Records with More than 8 Numeric Characters in the Field.	44,101	60,853
5	Records with Numeric Characters Only in the Names Field	48	69
6	Records with Letters Only in the ID/ Passport Field	568	755
7	Records with a single Name either Primary or Secondary Name Only	11	12
8	Passports whose first Letters did not Start with A, B, C, D or KE	250	6,872

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It is clear from the above analysis that the IEBC did not conduct a thorough cleaning of the register after the KPMG audit. Therefore, the integrity of the register used during the elections could not be guaranteed.

Regulation of Campaign Finance

ELOG has noted the continued lack of regulation of campaign monies by the IEBC in spite of the provision under Article 88 (4)(i) which vests in the Commission the mandate to regulate the amount of money used in respect of any election.

Enforcement of Electoral Offences Act

ELOG equally observed malpractices and electoral offences relating to multiple registration, offences relating to voting, use of threats, violence to force people to vote in a particular way and stopping others from voting, use of public resources and engagement of public

The Phenomenon of Fake Electoral News

As part of the initiative for open electoral data and processes, ELOG, working in partnership with Code for Kenya's PesaCheck was able to quickly verify and fact-check scores of incidents and claims received on E-Day ranging from images of children allegedly voting to reports of violence and voter-interference. The team has checked and debunked more than 80 election-related claims drawn mainly from social media and mainstream media sources.

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Conclusion

The overwhelming issue on the conduct of the fresh election was whether the political environment created a conducive environment in which credible elections could be conducted. ELOG notes:

- ELOG observes that insecurity, violence, intimidation, fear, tensions, coercion, undue influence and ultimate postponement and cancellation of voting in 25 constituencies, disenfranchised millions of Kenyans who were eligible to vote. The sum effect of these factors was to deny millions of Kenyans the opportunity to express their free will.
- The absence of non-partisan observers and party agents other than Jubilee ones in the majority of polling station also severely compromised the transparency and accountability of the voting and counting processes.
- On the basis of the above challenges, ELOG concludes that the existing environment was not conducive for conducting a credible election. In our view the NASA coalition and the Jubilee Party largely contributed to this environment. The IEBC was also responsible through acts of commission and omission.

RECOMMENDATIONS

1. Elections Management

ELOG recommends a comprehensive independent legal and operational audit of IEBC's management of the election. This process should involve as many stakeholders as possible and lessons learned must inform the next phase of electoral reforms.

2. Voter Register

The Voter Register remains a contentious issue that must be addressed. ELOG noted that IEBC publicly shared the voter register one day to the election. This was in contravention to the spirit of the provisions of the Elections Act that requires adequate time be accorded to the voters to verify their details. Preliminary findings from ELOG's Voter Register Audit indicate that IEBC has not managed to fully clean up the register even after the KPMG audit.

3. Legal Redress

Cognisant of respect for the rule of law, ELOG urges parties aggrieved by the conduct and outcome of the October 26th Election to follow due process as laid down in the Constitution and other relevant laws.

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4. Building a Nation: Promoting Tolerance and Harmony

The political divisions in country immensely affected the outcomes of the fresh presidential elections. As the country readies itself to engage on a political settlement and even possible petitions against the concluded elections, political leaders should promote a culture of tolerance and harmony and dissuade their supporters from violent engagements.

5. Dealing with the Scars of the Violence

ELOG recommends that the Office of the Director of Public Prosecution (ODPP) speedily investigates the numerous incidents of assault and killing of civilians in the run-up and during the just concluded elections. So far no official report has been issued by the authorities. Kenyans, survivors, their families, and communities should be assured that the State does not condone violence committed by the police or any other person, and that the State will take all measures necessary to end impunity for these violations.

6. Respect for Institutions

The Constitution of Kenya vests powers to several independent institutions to exercise their mandate. Two of these institutions; the IEBC and the Judiciary have come under heavy attack by political actors. ELOG recommends that respect for institutions must be upheld by all Kenyans. Equally so, the beholders of the said institutions should uphold the dignity of the same by ensuring they conduct themselves in accordance with their delegated mandate and the constitution.

7. National Dialogue

There is need for national dialogue to address broad range of social, political and economic issues affecting the country. ELOG urges that all stakeholders be involved in this exercise. Similarly, we urge that the terms of reference and agenda for this dialogue be agreed upon by the relevant stakeholders within the shortest time possible.

ELOG as a Kenyan Citizen's platform remains concerned about the lack of respect for the Constitution of Kenya during the electoral period. These include attacks on independent institutions, disregard for rule of law, inclusivity and public participation and flagrant human rights violations. Kenya must make deliberate and purposeful strides to work towards cohesion by addressing the political challenges that impede Kenya from realising the aspirations promised and premised in our Constitution.

May God Bless You and God Bless Kenya

Thank You

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