



CREDIBLE, PEACEFUL, FREE AND FAIR ELECTIONS

**OBSERVATION REPORT FOR THE PARLIAMENTARY BY-
ELECTIONS IN EMBAKASI SOUTH, UGENYA, WAJIR WEST AND
LELAN CAW BY ELECTION**

MAY, 2019

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ABBREVIATIONS AND ACRONYMS

BVR	Biometric Voter Registration
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CJPC	Catholic Justice and Peace Commission
CMD	Centre for Multi-Party Democracy
CNN	Cable News Network
CoK	Constitution of Kenya
CRECO	Constitution and Reform Education Consortium
ECJP	Ecumenical Centre for Justice and Peace
ELOG	Elections Observation Group
EMB	Electoral Management Body
EVID	Electronic Voter Identification Device
FIDA-K	Federation of Women Lawyers - Kenya
GBV	Gender Based Violence
ICJ	Kenya Chapter of the International Commission of Jurists
ICT	Information Communication and Technology
IEBC	Independent Electoral and Boundaries Commission
IEC	Information Education and Communication Materials
IED	Institute for Education in Democracy
IRI	International Republican Institute
JLAC	Justice and Legal Affairs Committee
KDA	Kenya Diaspora Alliance
KHRC	Kenya Human Rights Commission
KICD	Kenya Institute of Curriculum Development
KICTANET	Kenya ICT Action Network
KIEMS	Kenya Integrated Election Management System
KLRC	Kenya Law Reform Commission
KNCHR	Kenya National Commission on Human Rights
KNICE	Kenya National Integrated Civic Education Programme

LRF	Legal Resources Foundation
LSK	Law Society of Kenya
MCAs	Members of County Assembly
MCK	Media Council of Kenya
NCCK	National Council of Churches of Kenya
NCHRD-K	National Coalition of Human Rights Defenders-Kenya
ODPP	Office of the Director of Public Prosecutions
ORPP	Office of the Registrar of Political Parties
PPA	Political Parties Act
PPDT	Political Parties Disputes Tribunal
PPLC	Political Parties Liaison Committee
PWDs	Persons Living with Disabilities
SCoK	Supreme Court of Kenya
SUPKEM	Supreme Council of Kenya Muslims
TWG	Technical Working Group
UDPK	United Disabled Persons of Kenya
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
YAA	Youth Agenda
KDA	Kenya Diaspora Alliance

ACKNOWLEDGEMENTS

ELOG acknowledges and appreciates the UK's Department for International Development (DFID) and Deepening Democracy Programme (DDP) for their generous support towards making this mission possible.

We are grateful to ELOG Steering Committee for its strategic leadership under the Chairperson, Regina Opondo (CRECO). We acknowledge and thank Diana Sifuna (Youth Agenda), Susie Ibutu (NCKK), Beatrice Odera (CJPC), Teresa Omondi (FIDA), Anderson Gitonga (UDPK), Ven. Jephthah Gathaka (ECJP), Kennedy Masime (CGD), Lattif Shaban (SUPKEM), and Elayne Okaya (IED). Similarly, ELOG is grateful for the support it received from its thematic members Wanjiru Gikonyo (TISA), George Collins (TEAM), Catherine Gicheru (CODE 4 KENYA), James Nyangori (CEMIRIDE), ODONGO (LRF) and Sarah Kimaru (Kimbilio Trust).

We extend our immense gratitude and appreciation to ELOG secretariat for the overall planning and execution of this mission. We acknowledge and appreciate the overall leadership of the National Coordinator, Mulle Musau. Our immense gratitude to Marcus Agenga, Senior Program Manager and his team of program officers: Sarah Kinanu, Ian Smith, Irene Kirumba, William Onyango, Matilda Igunza and Mbinya Nahum. We thank all our field staff for diligently performing tasks assigned to them.

We thank IEBC for facilitating the work of ELOG in all the four electoral areas and furnishing us with critical information as well as accrediting our observers in a timely manner.

We hope that the recommendations proposed herein will not only elicit healthy conversations around the electoral reform agenda in Kenya but also call both the duty bearers as well as the civil society to action.

Regina Opondo

Chairperson

ELOG Steering Committee

EXECUTIVE SUMMARY

Elections Observations Group (ELOG) is a long-term, permanent and national platform which comprises of Civil Societies Organizations (CSOs) including Faith Based Organizations (FBOs) with the mandate of strengthening democracy in Kenya and in the African Region through promoting transparent and accountable electoral processes that include public participation. ELOG seeks to promote peaceful, credible, transparent, accountable, free, fair, and inclusive elections through consistent election monitoring and observation of the electoral processes culminating to an objective and independent report.

The Supreme Court of Kenya nullified elections of the Members of Parliament of Embakasi South and Ugenya and Wajir west Constituencies on the basis of malpractices in the elections and declared that the Independent Electoral and Boundaries Commission (IEBC) to conduct fresh elections. In Lelan Ward, the Member of County Assembly (MCA) passed on hence the seat became vacant. Consequently, IEBC organized by-elections in the aforementioned seats.

In this regard, ELOG deployed an observer mission in which it recruited **7** Long Term Observers (LTOs) to observe the Pre-election period and **116** Short Term Observers (STOs) for the purposes of E-Day observation. Similarly, ELOG deployed 5 roving teams during the E-Day¹. The objectives of pre-election observation were to deter irregularities and fraud in the electoral processes, to safeguard the integrity of the by-elections as per the constitution and to continue to provide information to the citizens on the conduct of the IEBC, Political Parties, candidates, CSOs and other stakeholders especially during the campaign period.

The LTOs were engaged for one month to observe the pre-election activities in each electoral area and weekly reports were issued and disseminated. On the other hand, the goal of STOs was to observe the quality of the Election Day processes and confirmation of the results in the stations under observation. This is in accordance with the Art. 88 (2h) of the CoK in which the IEBC is mandated to facilitate the observation, monitoring and evaluation of elections. The data gathered in the field by the observers was relayed to ELOG's Data Center for collation and analysis so as to generate a report.

¹ ELOG deployed **116** STOs; **74** to Embakasi South, **23** in Ugenya, **13** in Wajir and **13** in Lelan Ward

LTOs Deployment and Findings

In light of the foregoing, The LTOs were recruited, trained and deployed to observe the pre-election period with a focus on electoral activities relating to voter education, political campaign activities, election related violence, and election-day preparations by the IEBC. The LTOs were trained to observe any instances of use of inflammatory, defamatory or insulting language. They were to also report on the use of hate speech, incitement to violence, instances of intimidation, harassment or violence during the pre-election period. They completed and sent observation reports weekly via coded text messages (SMS). Moreover, during the reporting period, LTOs reported critical incidents observed in the field to the ELOG data center for analysis. The LTO's observed that voter education was conducted by IEBC and URAIA in all electoral areas.

STOs Recruitment, Training, Deployment and Report

The LTO's assisted the field personnel to recruit STOs, with some coming from member organizations. All the recruited observers were then trained on their duties and deployed to their respective polling stations as stationary or roving observers. A group of 12 trainers was tasked with training the observers with each of them required to submit a report on the activity.

The IEBC provided all the strategic items in all the polling stations in the By-Elections which included ballot box, ballot papers, voter register, indelible ink, stamp, and results form. Voter secrecy was observed apart from the instances where there was assisted voting. For instance, in Wajir West, The Presiding Officers in the polling stations observed would shout the candidate the assisted voter has chosen. All ballot boxes were empty and sealed before the voting and they were also sealed before the counting began in all the polling stations observed.

Moreover, no party agents requested for a recount in all the polling stations observed during the By- Elections. All the voters standing in the queues in during the By-Elections were allowed to vote while some voters were not allowed to vote due to issues such as not having the proper documents such or reporting to the wrong polling station.

In regards to incidences, the STOs reported that some of the KIEMS kits in most polling stations in which they observed, failed to function at some point due to issues such as hanging, low power battery or lack of power. Nonetheless, the IEBC either fixed the kits or replaced them with others. The STO based at Jophena Polling Center in Embakasi Constituency noted that people came into the polling station shouting that voter bribery is going on. One of the party agents was arrested and voting was disrupted for 15 minutes until he was released. In addition, at Chaminade Hall

Polling Center, in Embakasi Constituency another party agent was arrested due to voter bribery. The aforementioned issues did not compromise the integrity of the election².

Recommendations

- a)** ELOG recommends that all political actors should adhere to the code of conduct and stringent actions should be taken against the violators by the relevant bodies such as the IEBC, ORPP, DPP and NCIS.
- b)** Adverse campaigning should be strongly condemned and profiled as such by the media and other actors like CSOs.
- c)** Low voter turnout equally should be addressed. In regards to Civic and Voter Education, ELOG vouches for better planning and timely conduct of civic and voter education programs. While ELOG noted that such activities were carried out, it encourages sufficient resourcing by government and other funding partners.
- d)** ELOG notes that the success of electoral processes requires a plurality of actors and to this encouraged a continuous engagement policy and approach that is more inclusive, regular and structured in relations to the conduct of the electoral processes.

² Tables on the summary of the E-Day data on the opening of polling stations, voting process, closing of polling stations and counting of the votes have been attached separately from this document.

CHAPTER ONE

1.0. INTRODUCTION, OBSERVATION STRATEGY AND METHODOLOGY

1.1. INTRODUCTION

ELOG is a long-term, permanent and national platform which comprises of Civil Societies Organizations (CSOs) including Faith Based Organizations (FBOs) with the mandate of strengthening democracy in Kenya and in the African Region through promoting transparent and accountable electoral processes that include public participation. ELOG seeks to promote peaceful, credible, transparent, accountable, free, fair, and inclusive elections through consistent election monitoring and observation of the electoral processes culminating to an objective and independent report.

Formed in 2010, ELOG's main goal is to strengthen democracy and good governance in Kenya and the African region by providing a platform for domestic election observation and monitoring. ELOG is composed of 10 Steering Committee members and 9 thematic members as will be explained in more detail below. The SC committee members are drawn from the executive appointees of the following institutions:

1. Centre for Governance and Development (CGD)
2. Constitution and Reform Education Consortium (CRECO)
3. Catholic Justice and Peace Commission (CJPC)
4. Ecumenical Centre for Justice and Peace (ECJP)
5. Federation of Women Lawyers of Kenya (FIDA)
6. Institute for Education in Democracy (IED)
7. National Council of Churches of Kenya (NCCK)
8. Supreme Council of Kenya Muslims (SUPKEM)
9. United Disabled Persons of Kenya (UDPK)
10. Youth Agenda

The thematic members include:

1. The Institute for Social Accountability (TISA)
2. Code 4 Kenya
3. Centre for Minority Rights Development (CEMIRIDE)
4. Kimbilio Trust
5. Transform Empower for Action Initiative

6. Legal Resources Foundation (LRF)

Since its formation, ELOG has continued to deploy two principle strategies and methodologies: Long Term Observation (LTO) and Short Term Observation (STO) so as to observe the pre-election period, Election Day and post-election processes and the use of information and telecommunication technology (ICT). ELOG deploys scientific methodologies which helps it to verify the official results as released by the electoral management body with a close margin of precision. It has also conducted observations at a national scale in three main occasions.

1.1.1. Objectives of the Mission

All the phases of the electoral cycle warrant observation to reduce human error, enhance transparency and build confidence in the electoral processes and the institutions that conduct these processes. ELOG's main objectives in observing these by-elections included the following:

- To increase the overall confidence in the by-election processes including the results;
- Enhance public participation in the by-election processes;
- Observe the by-elections and make recommendations towards improved electoral processes in Kenya.

1.2. OBSERVATION STRATEGY AND METHODOLOGY

ELOG's election observation strategies and methodologies are built on the principle that elections are a process and not an event, and that elections belong to the people. Both the strategy and methodology that were employed in this observation mission were anchored on the electoral cycle approach. ELOG deployed a core team to coordinate the election observation stationed at its data center, **7** Long Term Observers (LTOs) who were engaged for one month to observe the pre-electoral activities in each of the electoral areas, **116** Short Term Observers (STOs) were deployed to observe the E-Day processes and results and **5** roving teams by senior/expert observers and tally center observers (TCOs).

ELOG observers were trained and equipped with standardized data collection tools – checklist as well as incident forms with information looking for evidence-based data. Elections day processes observed included the following: setup and opening of the polling stations, voting process, closing and counting of votes and tallying and announcement of results. ELOG observers were required to

send information on the processes immediately through coded text messages. The coded messages were then compiled and analyzed for the purposes of generating this report.

Learning from the 2017 observation mission where ELOG was castigated for not adequately covering the entire electoral process and not fully providing evidence based information, ELOG ensured that its data collection tools were developed in a more evidence based approach to capture information use of pictorial and video clips of the pre-election events as well as E-Day processes. Similarly, ELOG mounted full presence in each of the constituency tallying centres so as to enable it speak to the credibility of the tallying and announcement of results. All the observers were required to send to ELOG data centre, through a database management system, all the signed copies of forms 35A and 35B for the National Assembly elections and forms 36A and 36B for the County Assembly Ward election.

CHAPTER TWO

2.0: LEGAL REGIMES THAT GOVERN ELECTIONS IN KENYA³

Table 1: Legal Regimes that Govern Elections in Kenya

	NAME	CRUCIAL PROVISIONS
1	Constitution of Kenya	<p>It establishes the Electoral and Boundaries Commission, (IEBC). The Commission has the major responsibility of conducting elections and referenda. In the performance of its functions, the Commission is subject only to the Constitution and the law and hence not subject to the direction or control by any person or authority.</p> <p>The Constitution grants four (4) types of rights to participate in an election which are: Right to be registered as a voter; Right to vote by secret ballot in any election or referendum; Right to be a candidate and if elected, right to hold a public office; and Right to join and participate in a political process.</p> <p>Article 10 of the Constitution provides for national values and principles that is required to be observed during elections. These values include: good governance, integrity, transparency and accountability.</p> <p>The electoral system must comply with the principle of free and fair elections that bear the following characteristics: o</p> <ul style="list-style-type: none"> • Free from violence, intimidation, improper influence or corruption; • Conducted by an independent body; • Transparent; and • Administered in an impartial, neutral, efficient, accurate and accountable manner.

³ Others include the following: Elections (Technology) Regulations; Elections (Voter Registration) Regulation; Elections (General) Regulation, 2017; Election (Voter Education) Regulation, 2017; Elections (Party Primaries and Party Lists), Regulations 2017; Rules of Procedure on Settlement of Disputes, 2012; Election (Parliamentary and County Elections) Petitions Rules, 2013 and Supreme Court (Presidential Election) Petition Rules, 2017

		<ul style="list-style-type: none"> • By secret ballot.
2	Elections Offences Act (2016)	Election offences will cause warning, disqualification, prosecution or imprisonment.
3	Elections Act (2011)	<p>This Act provides for the following: the conduct of both elections and referenda; the registration of voters, and the determination of questions concerning registration; election offences and resolution of election disputes</p> <p>All adult Kenyan citizens have the right to vote provided they are registered in the Register of Voters. The Register of Voters comprises:</p> <ul style="list-style-type: none"> • A poll register in respect of every polling station; • A ward register in respect of every ward; • A constituency register in respect of every constituency; • A county register in respect of every county; and • A register of voters residing outside Kenya
4	Political Parties Act	This Act regulates the formation and operation of political parties. It provides for the registration of political parties and how they are regulated. It also provides for the funding and accounting of political parties, and the resolution of disputes within political parties
4.	IEBC's Act	Mandates IEBC to conduct or supervise elections to any elective office; The Code requires the Commission's employees to conduct themselves with integrity and neutrality. All the members are expected to perform their duties in a manner that maintains public confidence and to discharge their duties in a professional and efficient manner and respect the rights and freedoms of all persons.

CHAPTER THREE

3.0. CONTEXT OF THE BY-ELECTIONS

Kenyan General Elections were held on 8 August 2017 to elect the president, governors, senators, county woman representatives, members of the national assembly, and members of the county assembly. At the closure of the petition-filing window on September 8, 2017, a total of 388 cases had been lodged challenging outcomes of the six elective-seat races. This resulted to a pool of petitions, representing an increase of 200 cases compared with 2013 general elections.

The Independent Electoral and Boundaries Commission (IEBC) consequently released by-election schedule for three constituencies (Embakasi West, Ugenya and Wajir West) and one County Assembly Ward (Lelan, Elgeyo Marakwet County) which were occasioned by Supreme Court's nullification of the victories of the incumbents on the grounds that declared winners had not been validly elected. ELOG sought to observe these by-elections that were slated for 5th April 2019 (Embakasi West, Ugenya, Lelan Ward) and 25th April 2019 (Wajir) in order to issue comprehensive statements and reports on their conduct.

The by-elections were preceded by a very emotive and divisive electoral period (2017) which was characterized by a number of key events, namely, the nullification of the August 2017 presidential election results and subsequent order of fresh presidential election on Oct 26th 2017 which were subsequently also boycotted by the opposition, the 'swearing in' of the leader of opposition as the 'Peoples President', 'Handshake' between the President and the Leader of Opposition leading to the formation of an initiative to unite the country, called Building Bridges Initiative (BBI). These new events produced new dimensions and ramifications within the major political outfits, JUBILEE and NASA especially after the 'Handshake'⁴.

⁴ These tensions led to the emergence of 'cracks' within the major opposition coalition, NASA culminating in what appeared to be 'negotiated' withdrawal of candidates/parties from contesting in any emergent electoral contests as was seen in Wajir West By-Election.

CHAPTER FOUR

4.0. PRE-ELECTION FINDINGS/ENVIRONMENT

4.1. Training and Deployment of Seven Long Term Observers.

As part of its observation efforts towards the 2019 By-Elections, ELOG recruited, trained and deployed 7 Long Term Observers (LTOs) to provide periodic, timely and accurate information on the pre and post-election environment. The LTOs were deployed to observe the pre-election period with a focus on electoral activities relating to voter education, political campaign activities, election related violence, and election-day preparations by the IEBC. The LTOs were also trained to observe any instances of use of inflammatory, defamatory or insulting language. They were to also report on the use of hate speech, incitement to violence, instances of intimidation, harassment or violence during the pre-election period.

4.2. Objectives of Pre-Election Observation

- To deter and detect irregularities and fraud in the electoral process.
- To safeguard the integrity of the by election in the three by elections
- To provide information to the citizens on the conduct of pre-electoral activities

4.3. Key Findings

The following are key findings from LTO reporting between 22nd March and 24th April 2019.

1. IEBC Preparations and Voter Education Provision

During any electoral processes, the electoral commissions and other electoral stakeholders, such as local media and CSO's were expected to provide continuous and robust voter education and information in order to prepare the citizens for the elections.

ELOG noted voter education activities conducted by IEBC and CSOs in areas it was present. It's important to note that IEBC and URAIA conducted voter education in all the areas that the by-elections were to take place. Civic education was also conducted over local media in Wajir West Constituency through Wajir Community FM.



Figure 4.1: IEBC Official during a Voters Education Session in Lelan Ward

ELOG observers were able to observe IEBC earnestly preparing for the election with the recruitment and training of the polling staff in the respective regions.

2. General Campaign Environment

In Embakasi South and Lelan, campaigns were relatively peaceful and were concluded within the IEBC stipulated time. However, in Ugenya Constituency, LTOs reported incidences of defacing and destruction of campaign posters in Ukwala ward. Moreover, during ODM Campaigns at Sihay Market on 31st March, 2019, the party's convoy was stoned at around 4pm by goons allegedly belonging to one of the contestants. This happened 400m away from the venue as the convoy snaked its way into the market.



Figure 4.2: ODM Party during their Campaign at Sihay Market in Ugenya Constituency

In Wajir West, the campaigns were largely peaceful however, the LTOs reported having heard the disruption of Jubilee Party rally near Arbijahan Centre, and also defacing and removal of candidates' posters.

3. Withdrawal of Candidates from The By-Election

The LTO based in Wajir West reported that Prof Mohamed Yusuf Elmi, who was vying in ODM Party withdrew from the contest to rally behind Jubilee candidate Ahmed Kolosh. The other two candidates also stepped down to back up Ahmed Kolosh. This was allegedly as a result of internal negotiations between the Degodia clan and the Matan sub-clan to field one candidate to contest for the seat. In this area, clan politics is said to play crucial roles in determining who vies for a political seat. This is what has been referred to as negotiated democracy.

4. Political Party Participation

Having nominated their candidates long before the pre-election period, all political parties that were participating in the process, namely, KANU, ODM, and JUBILEE supported their candidates and conducted their affairs in a democratic, participatory and inclusive manner.

5. Participation of Special Interest Group

In the four areas, only Lelan Ward and Embakasi South Constituency had women candidates running for the electoral positions against their male rival counterparts.

ELOG deployed some persons living with disabilities (PWDS) as Short-Term Observers (STOs) and accorded them with the necessary support.

4.4. Recruitment and Training of Short-Term Observers (STOs)

ELOG recruited its short term observers from the areas where the by elections were scheduled to take place. All the recruited observers were then trained on their duties and deployed to their respective polling stations as stationary or roving observers by a team of 12 trainers. In Ugenya Constituency, training took place at the Camunya Hotel, in Lelan Ward it was at AIC Kaptalamwa, in Embakasi south it took place at the Methodist Conference Centre while in Wajir West training took place at the Griftu Pastoral and Training Centre. In total ELOG deployed 116 STOs; 74 to Embakasi South, 23 in Ugenya, 13 in Wajir and 13 in Lelan Ward.

CHAPTER FIVE

5.0. OBSERVATION AND FINDINGS OF THE BY-ELECTIONS

5.1. EMBAKASI SOUTH BY-ELECTIONS

The Embakasi South election drew a large number of aspirants seeking to fill the position of Member of National Assembly that was left vacant after a successful petition by Irashad Sumra of ODM at the High Court. There were 14 candidates gunning for the seat where 13 were male and one female. The total number of registered voters in the constituency was 150,013 With 222 polling stations spread across 5 wards (Imara Daima, Kwa Njenga, Kwa Reuben, Pipeline and Kware). The average turnout of the election was a paltry **20.6%** in polling stations observed by ELOG observers deployed in the constituency. Further finding for this by election are as follows.

5.1.1. Arrival and Set Up

- 47% of the Presiding Officers who worked at the polling stations observed by ELOG in the Embakasi South By-Elections were women. It was also noted that **53%** of IEBC Polling Staff were female.

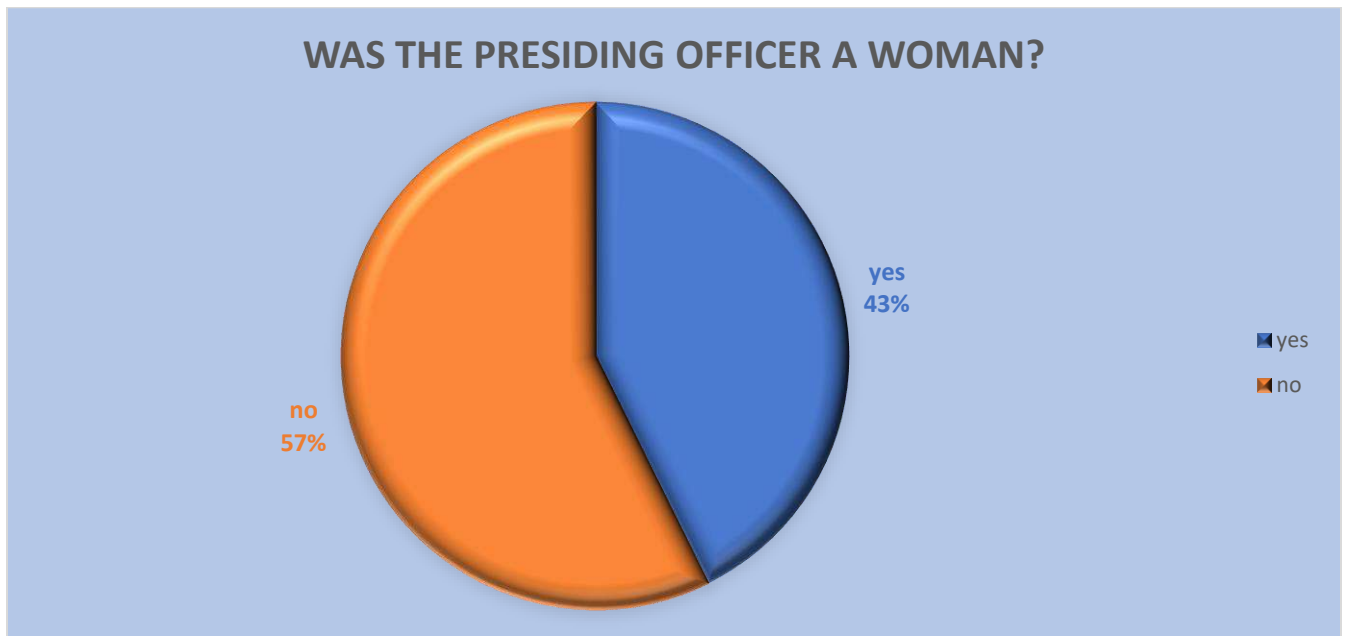


Figure 5.1: Gender Percentage of Presiding Officers in the Polling Stations Observed in Embakasi South Constituency

- In all polling stations that ELOG observers were deployed to, they were allowed to access the polling station and observe the E-day processes.
- ODM party agents were present in **82%** of polling stations observed while Wiper Democratic Movement (WDM-K) had their agent in **85%** of polling stations observed by ELOG, the other parties were present in **67%** of the polling stations that ELOG deployed in.
- The IEBC made available all the strategic items in all the polling stations that ELOG observers were present in. All polling stations reported to be having a Kenya integrated Elections Management systems (KIEMs).
- In polling stations observed, **80%** opened on time i.e. 6.15am while **16%** opened between 6.16am to 7.00am there was **4%** of polling stations observed opened between 7pm and 8am.

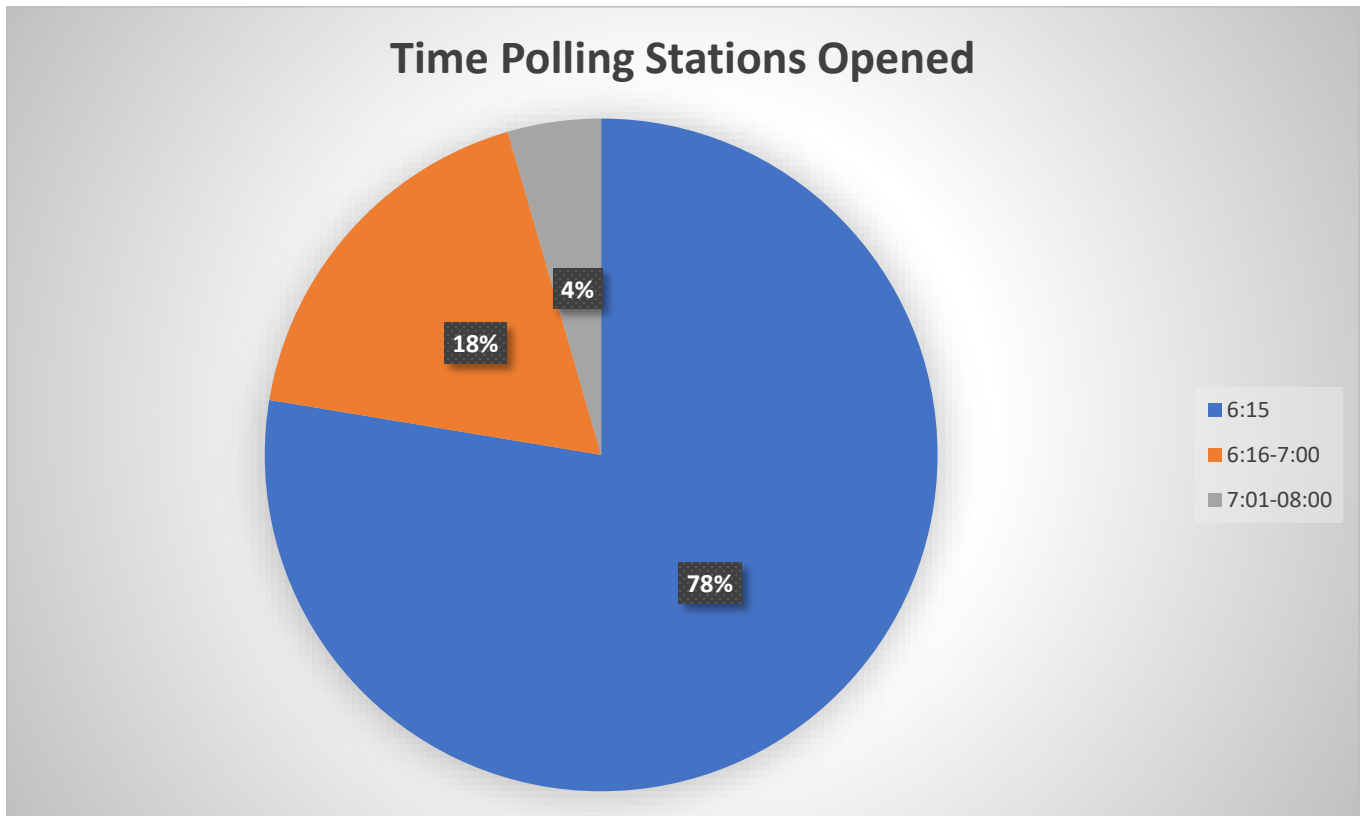


Figure 5.2: The Time in Which the Polling Stations Observed Opened in Embakasi South Constituency Opened

- Ballot boxes were shown to be empty in all the polling stations observed, before they were closed and sealed in readiness for the voting process to start.
- The presence of security personnel was visible in all the polling stations observed.

5.1.2. Voting

- All of the observed polling stations in Embakasi South had Kenya Integrated Election Management System (KIEMS) in place to identify voters during the voting process. Nonetheless in **22%** of polling stations observed the kits failed to function properly. The problem with the Kits ranged from them hanging and to power supply failures at the polling stations.

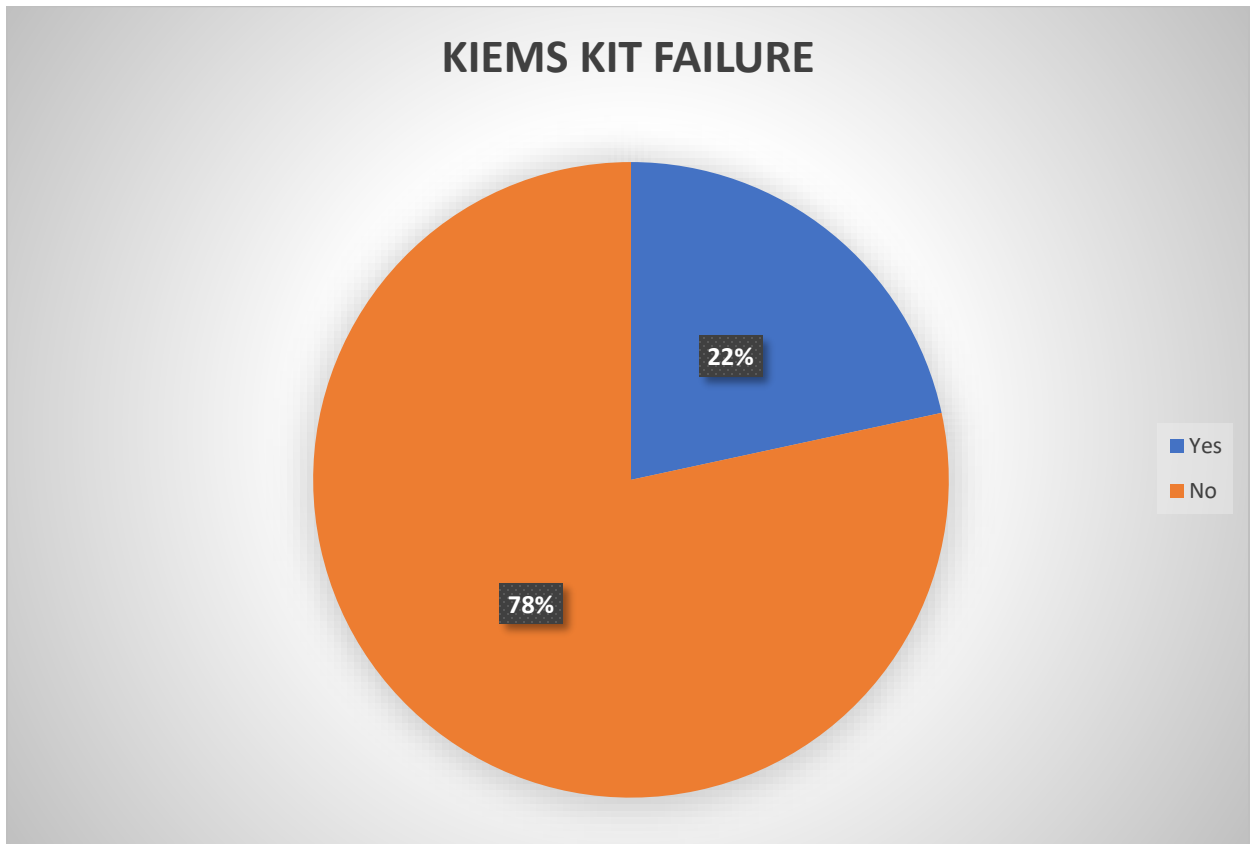


Figure 5.3: Percentage of KIEMS Kits Failure in Embakasi South Constituency

- The Secrecy of the ballot was observed in all of the polling station, with a voting booth set up so that voters can vote in total privacy.

- In all of the polling stations observed, there as one ballot box for all the positions in contestation.
- Ballot boxes were shown to be empty in all the polling stations observed (100%), before they were closed and sealed in readiness for the voting process to start.
- In **64%** of polling stations observed, all voters were permitted to vote while in **34%** some (1-25) were not allowed to vote. In **46%** of the polling stations observed many (Over26) were not permitted to vote with reasons ranging from being in the wrong polling station to lacking proper identification documentation.

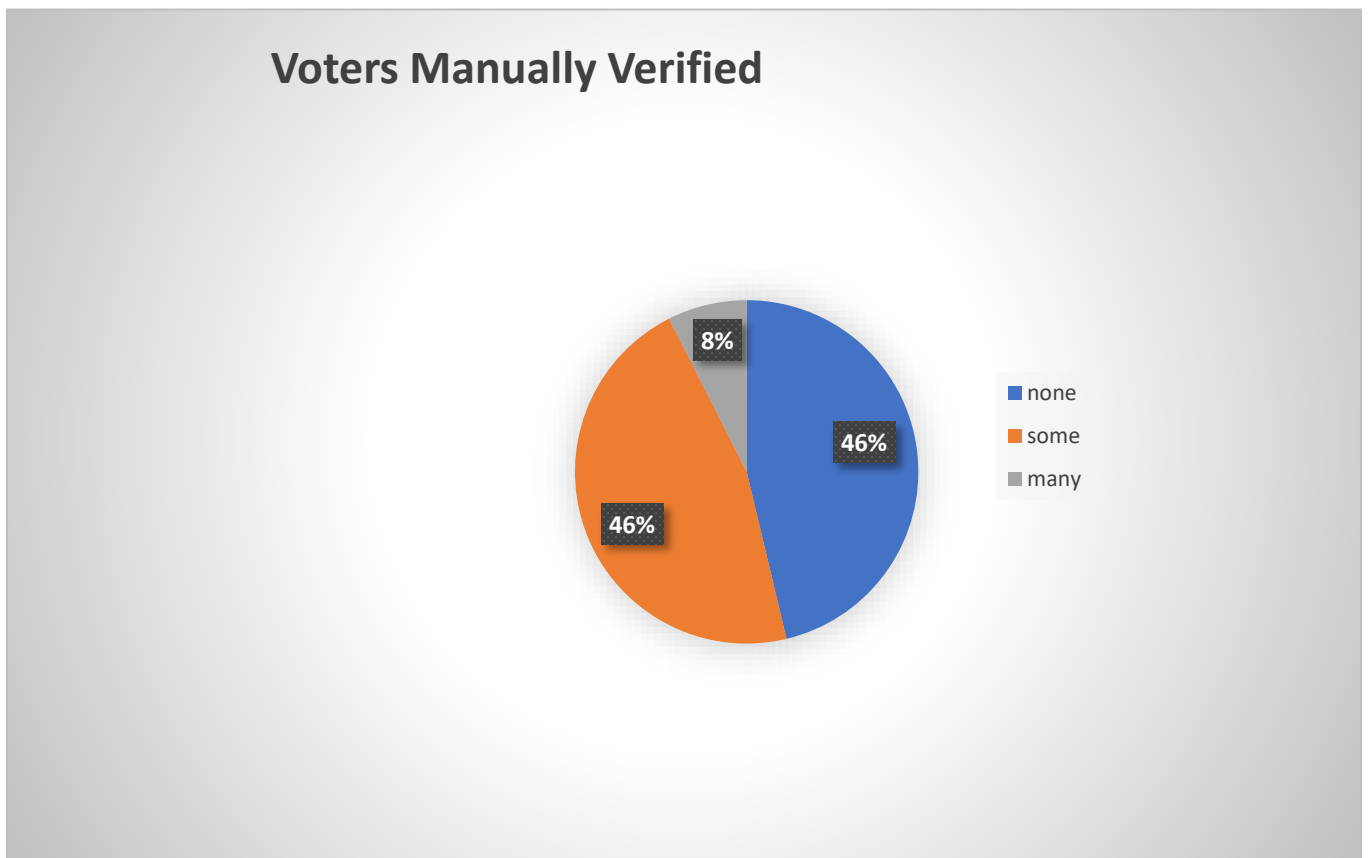


Figure 5.4: Percentage of Voters Manually Verified in Embakasi South Constituency

- In **46%** of polling stations where ELOG observers were deployed, they noted that there was no manual verification, while in **46%** of polling stations observed they established that some (1-25) voters were manually verified.

- In **52%** of polling stations observed there were no assisted voters while in **45%** of observed polling stations some (1-25) voters were assisted to vote. Many women (over 26) in **20%** of observed polling stations were assisted to vote while some (1-25) in **45%** of reported polling stations were assisted to vote. There were no women assisted to vote in **9%** of observed polling stations.
- The assisted voters in **49%** of polling stations observed were allowed to choose their assistants during voting while **34%** did not choose their assistants.

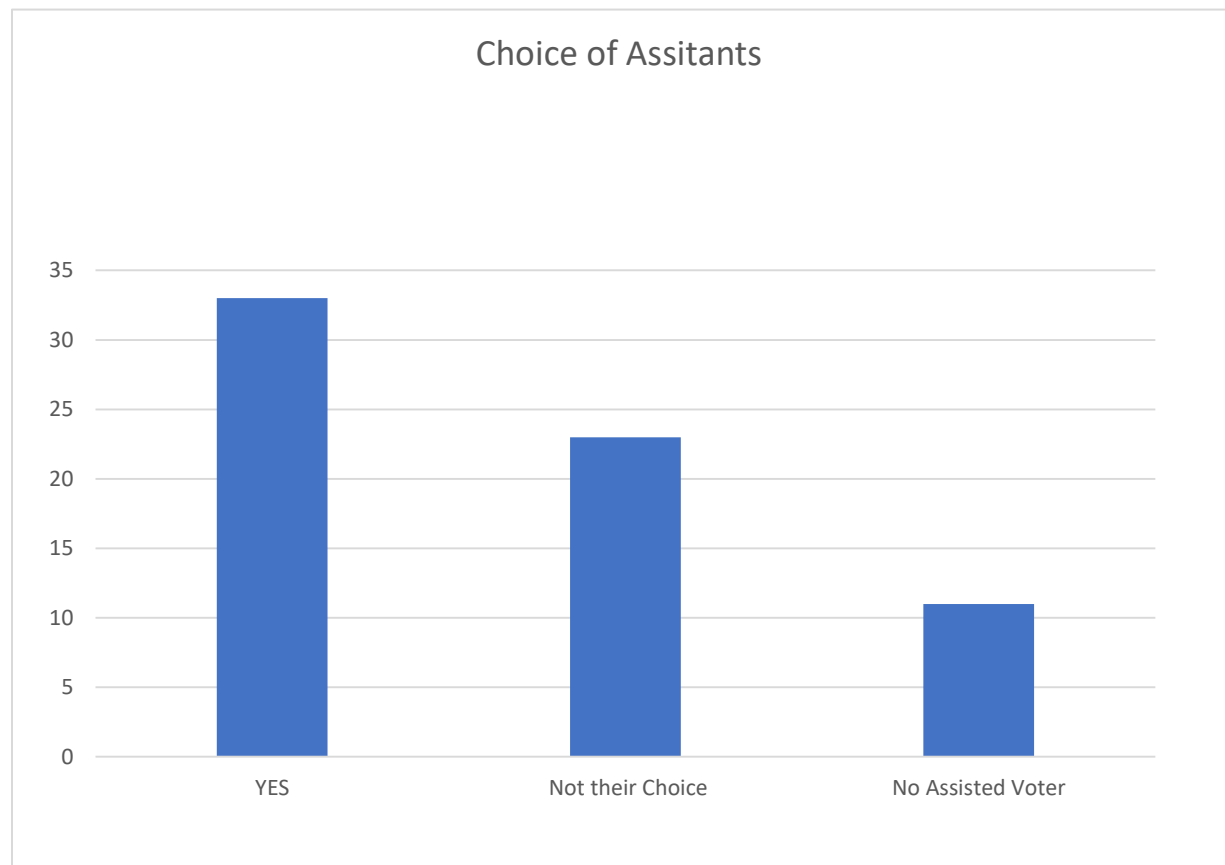


Figure 5.5: Percentage of the Voters' Choice of Assistants in Embakasi South Constituency

- All the voters in the queue by 5pm were all allowed to vote in **89%** of the polling station while in **11%** of polling stations there was no queue after 5pm.
- In all polling stations observed, observers reported minor problems during voting such as the KIEMs kits hanging and assisted voters not having their choice of assistant however, that did not compromise the integrity of the election.

5.1.3: Closing and Counting

- The ballot boxes in all the observed polling stations had seals intact before the count began.
- There was no political party/candidate agent that requested for a recount of the ballot in any of the polling station ELOG deployed.
- The ODM party agent's representatives present signed the declaration of results form in all polling stations observed.
- In **98%** of polling stations observed WDM-K party agent signed the results declaration form. PNU party agents in **46%** of polling stations observed signed the results forms while in **30%** of observed polling stations observed, they did not sign the form. There were no PNU agents during the counting period in **34%** of polling stations observed.
- The other parties not mentioned above did not sign the declaration form in **16%** of polling stations observed while in **84%** of polling stations that ELOG observed the other party agents signed results declaration form
- In **98%** of polling stations a copy of the results form was publicly fixed outside the polling station. Below is a chart indicating the vote count in polling stations observed in Embakasi South

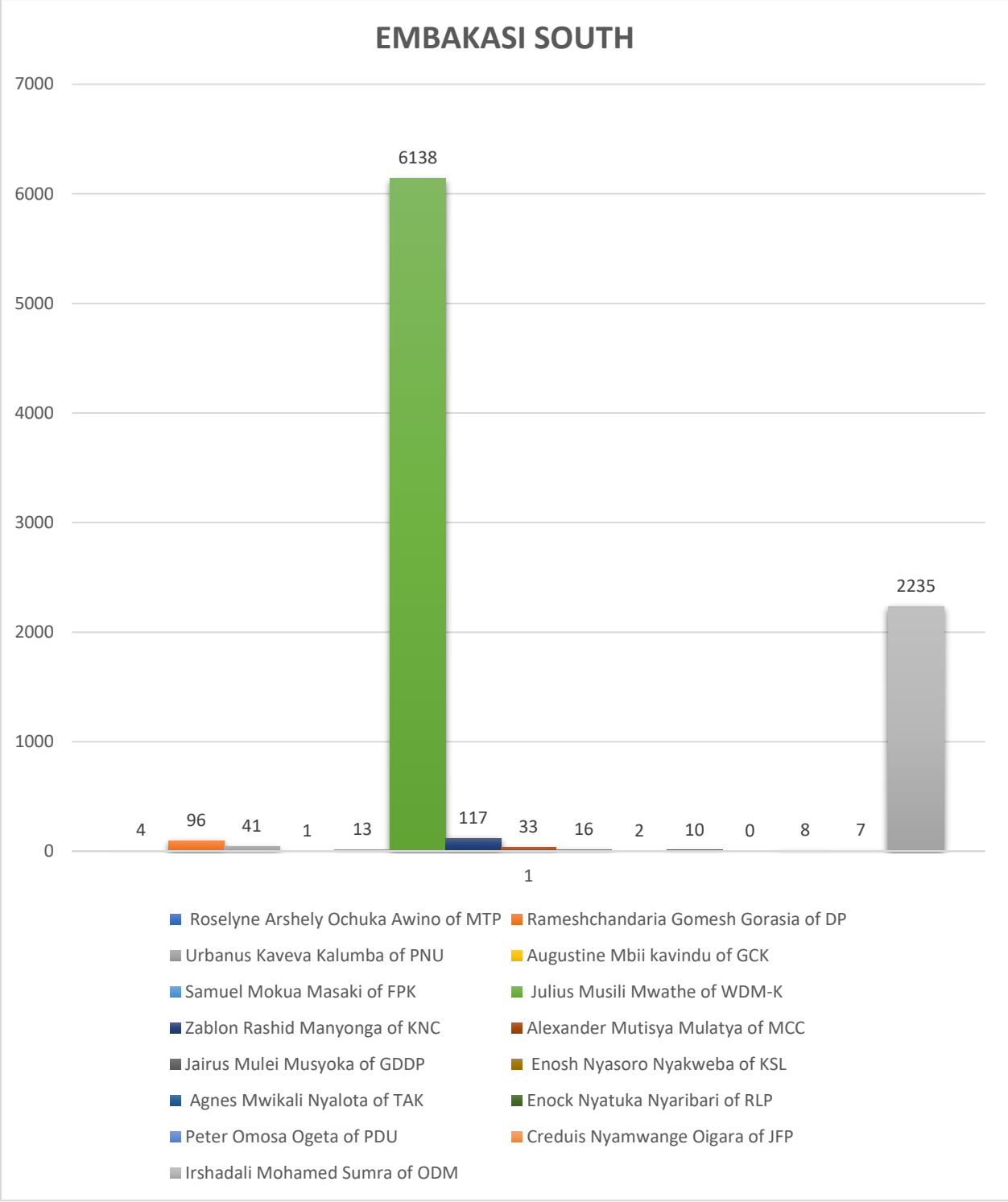


Figure 5.6: Votes per Candidate in the Polling Stations Observed in Embakasi South Constituency By-Elections

5.2. UGENYA CONSTITUENCY BY-ELECTIONS

In Ugenya, the position Member of National Assembly was left vacant after a successful petition by David Ochieng of **MDG** at the Court of Appeal. There were **4** candidates vying for the seat and they were all men. The total number of registered voters in the constituency is **57,603** With **112** polling stations spread across 4 wards (East Ugenya, West Ugenya, North Ugenya and Ukwala). The turnout in the By-Election was a **58%** in polling stations observed by **ELOG** observers deployed in the constituency. Further finding for this by election are as follows.

5.2.1. Arrival and Set Up

- In **18%** of polling stations observed the Presiding Officers were women and in **41%** of ELOG observed polling stations, the polling staff deployed by IEBC were female.

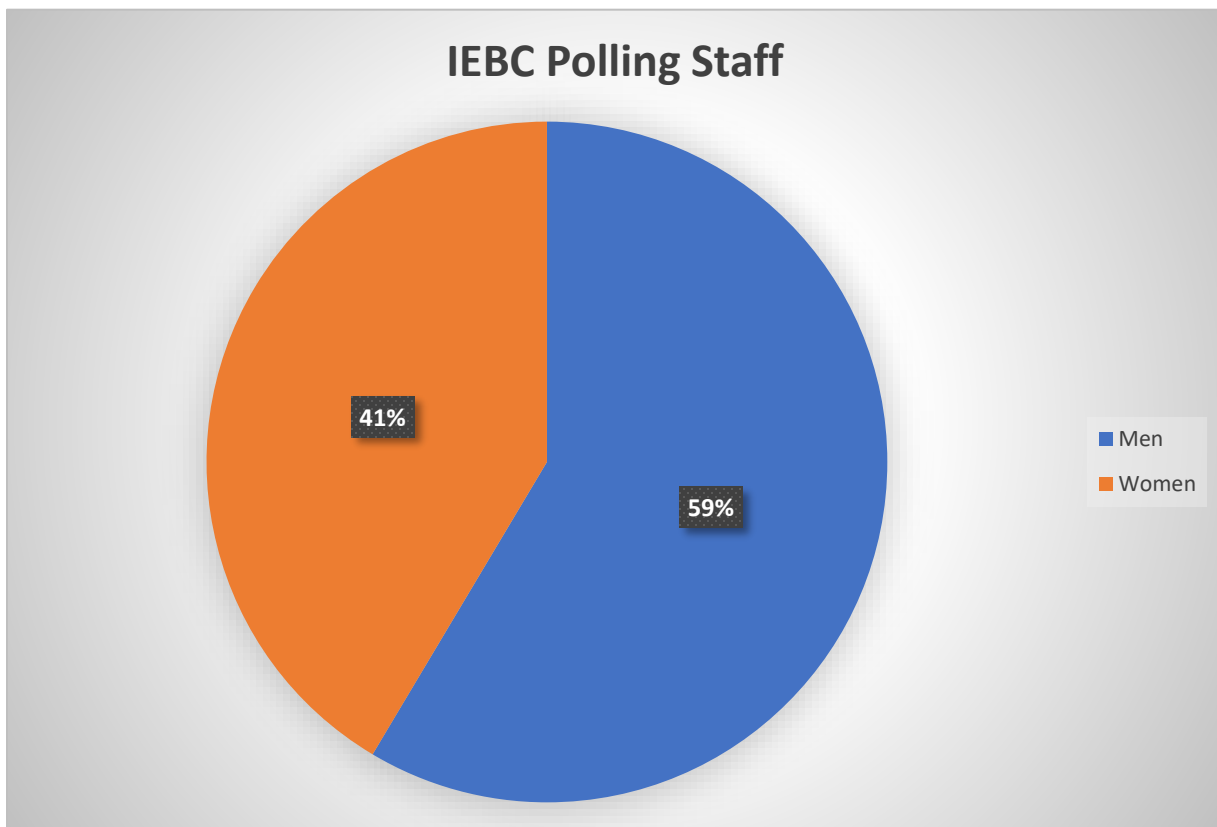


Figure 5.7: Gender Percentage of the IEBC Polling Staff in Ugenya

- In all the polling stations that ELOG observers were deployed, they were allowed to access the polling station and observe the elections.
- MDG party agents were present in **91%** of polling stations observed while ODM had their agents in **92%** of polling stations observed by ELOG. The other parties were present in **78%** of the polling stations observed.
- The IEBC made available all the strategic items in all the polling stations that ELOG observers were present. All polling stations were reported to be having Kenya Integrated Elections Management systems (KIEMs) kits.
- In polling stations observed, **82%** opened on time i.e. 6.15am while **8%** opened between 6.16am to 7.00am.

5.2.2. Voting

- All of the observed polling stations had Kenya Integrated Election Management System (KIEMS) kits in place to identify voters during the voting process, though in **31%** of polling stations observed the kits failed to function properly. The problem with the Kits ranged from redundancy and to power supply failures at the polling stations.
- The Secrecy of the ballot was observed in all of the polling stations observed in Ugenya, with a voting booth set up so that voters can vote in total privacy.
- In all of the polling stations observed, there as one (1) ballot box for all the positions in contestation.
- All ballot papers were stamped and voters marked with indelible ink on their fingers in all the polling stations ELOG deployed observers.
- Ballot boxes were shown to be empty in all the polling stations observed, before they were closed and sealed in readiness for the voting process to start.
- In **34%** of polling stations observed, all voters were permitted to vote. On the other hand, in **61%** of the polling stations observed, some voters (1-25) were not allowed to vote while **4%** of the polling stations observed, many voters (Over26) were not permitted to vote with reasons ranging from being in the wrong polling station to lacking proper identification documentation.
- In **39%** of polling stations observed, it was noted that there was no manually verification while in **52%** of polling stations observed some voters (1-25) were manually verified. In **8%** of polling station observed where many voters (over 26) were manually verified.

- In **45%** of polling stations observed, name of voters who were manually verified were **NOT** crossed out in the voter register while **55%** were crossed out.
- Many (over 26) voters in **47%** of observed polling stations observed were assisted to vote, and some (1-25) **13%** of observed polling stations were assisted while in **40%** of polling station there was no assisted.
- There were no women assisted to vote in **8%** of observed polling stations, but **49%** of polling stations observed Some (1-26) women were assisted to vote and in further **43%** of polling station observed Many (over 26) women were assisted to vote.
- Assisted voters in **91%** of polling stations observed were allowed to choose their own assistants while in **9%** of polling stations observed, they did not choose their assistants.
- The secrecy of the ballot was adhered to in all the polling station observed in Ugenya that except during assisted voting.
- All the voters in the queue by 5pm were allowed to vote in **51%** of polling stations observed while in **18%** of the polling station voter were not allowed to vote. In **31%** of polling stations observed there was no queue after 5pm.
- In **32%** of polling stations observed ELOG observers reported major problems such as KIEMS Kits not working during the voting hence voting was stopped for a while (over 30 mins) however, it later resumed. In **64%** of polling stations observed the problem observed were minor such as low charge in the KIEMS kits but the IEBC brought in alternative power supply sources. In **4%** of the polling stations observed, there were no problems during voting.

5.2.3. Closing and Counting

- The ballot boxes in all the observed polling stations had seals intact before the count began.
- There was no political party/candidate agent that requested for a recount of the ballot in any of the polling station ELOG deployed.
- The ODM party agent's representatives present signed the declaration of results form in all polling stations observed.
- In **32%** of polling stations observed Third way Alliance of Kenya (TAK) party agent did not sign the results declaration form and there were no TAK agents during counting

in 9% of the polling station observed. In 59% of ELOG observed polling stations TAK agent signed the results form.

- The other parties not mentioned did not sign the declaration form in 55% of polling stations observed while in 45% of polling stations observed, the other party agents signed results declaration form.
- In 91% of polling stations a copy of the results form was publicly displayed outside the polling station.

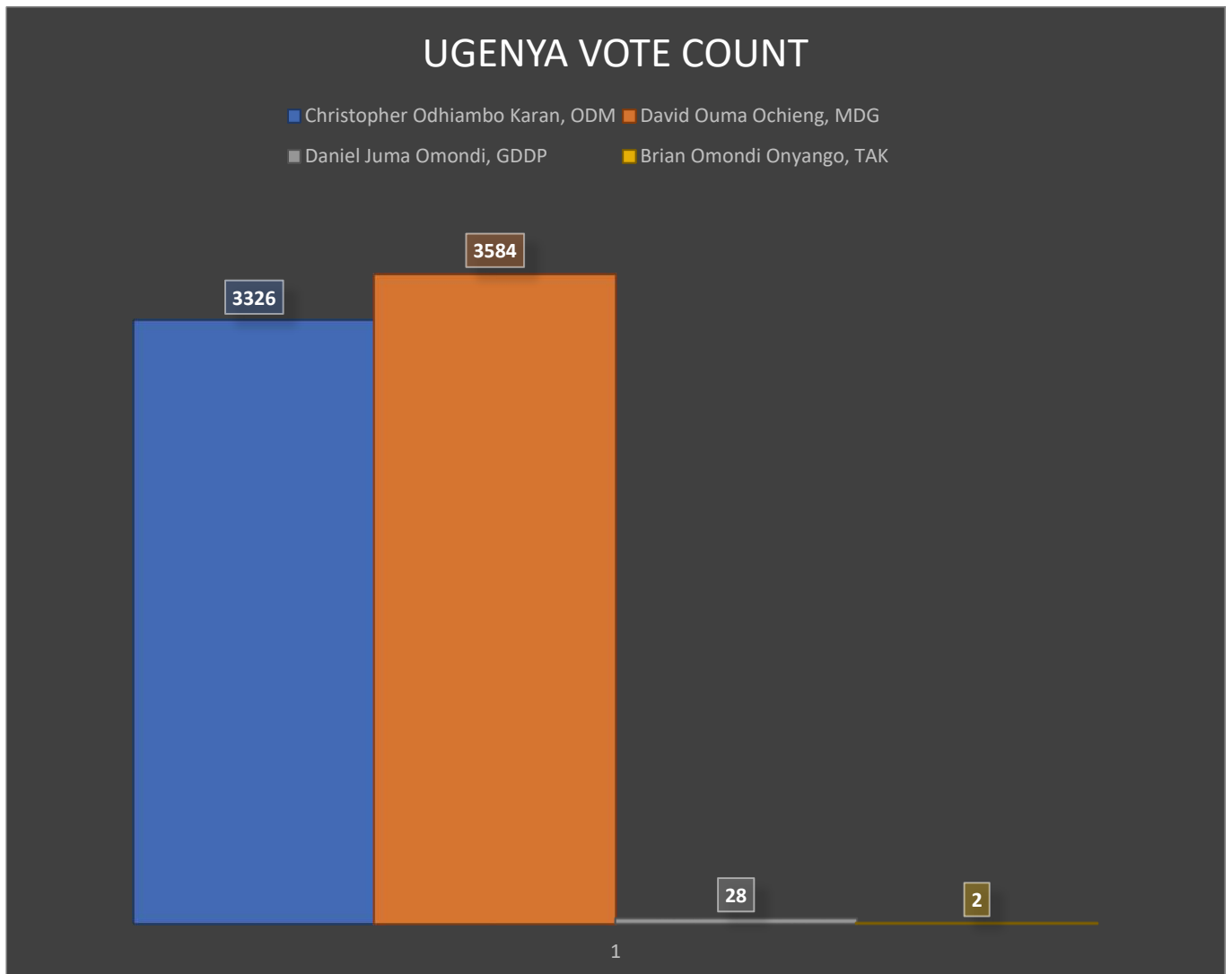


Figure 5.8: Vote Count in Polling Stations Observed in Ugenya

5.3. WAJIR WEST CONSTITUENCY BY-ELECTIONS

The Wajir West National Assembly seat fell vacant after Ibrahim Abdirahman of KANU successfully filed a petition at the court of appeal against Jubilee Party’s Ahmed Kolosh. There were 5 candidates vying for the seat all the candidates were men. The total number of registered voters in the constituency is **27,544**. Wajir West has **75** polling stations spread across 4 wards (Arbajahan, Adamasajide, Hadado and Wagalla). The turnout in the by-election was a **63.46%** in polling stations observed by ELOG observers deployed in the constituency. Further finding for this by election are as follows.

5.3.1. Arrival and Set Up

- In **8%** of polling stations observed the Presiding Officers were women while the IEBC polling staff in **34%** of polling stations observed by ELOG were also women.

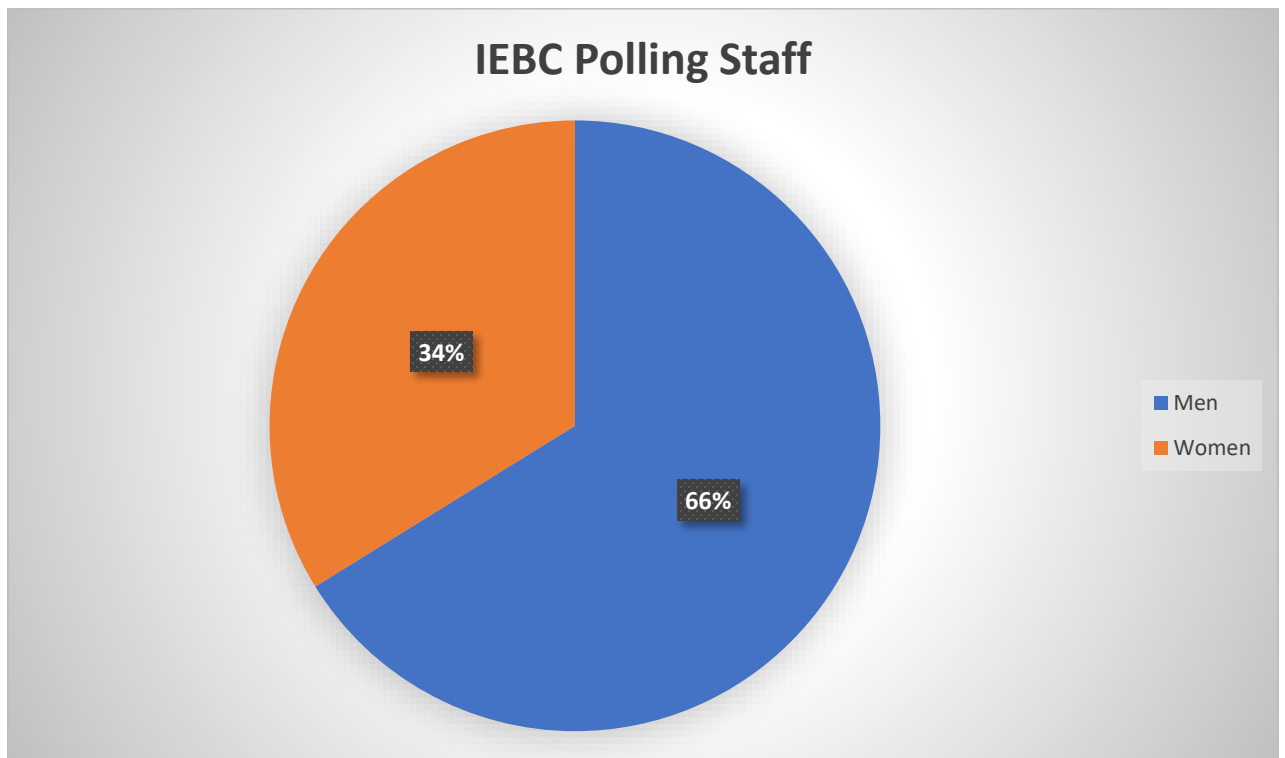


Figure 5.9: Percentage of the Gender of the IEBC Polling Staff in Wajir West Constituency

- All polling stations observed had security personnel and in **16%** of polling stations observed the security personnel did not have badge number on their uniforms.

- In all polling stations that ELOG observers were deployed, they were allowed to access the polling station and observe.
- Jubilee Party agents were present in **91%** of polling stations observed and KANU had their agents in **90%** of polling stations observed by ELOG, the other parties were not present in any of the observed polling stations.
- The IEBC made available all the strategic items in all the polling stations that ELOG observers were present. In **92%** of polling stations observed, they had a functional Kenya Integrated Elections Management systems (KIEMs).
- In the polling stations observed, **92%** opened on time i.e. 6.15am while **8%** opened after 8am.

5.3.2. Voting

- All ballot papers were stamped and voters marked with indelible ink on their fingers in all the polling stations that ELOG observed.
- Ballot boxes were shown to be empty in all the polling stations observed (100%), before they were closed and sealed in readiness for the voting process to start.
- All of the observed polling stations in Wajir West had Kenya Integrated Election Management System (KIEMS) in place to identify voters during the voting process, though in **8%** of polling stations observed the kits failed to function properly. The problem with the Kits ranged from them hanging and to power supply failures at the polling stations.
- In all of the polling stations observed, there as one (1) ballot box for all the positions in contestation
- In **50 %** of polling stations observed, some voters (1-25) were not permitted to vote.
- There were some voters (1-25) whose details couldn't be verified in the 67% of polling stations observed, while in 92% of polling stations observed their details were crossed out of the manual register.
- In **50%** of polling stations observed, there were many voters (over 26) who were assisted to vote. Some voters (1-25) in **42%** of observed stations were assisted, with **8%** having no assisted voters at all.
- Many (Over 26) of the assisted voters were women in **33%** of the polling stations observed while in **50%** of observed polling stations some observed assisted voters were women. There were no women assisted voters in **17%** of the polling stations.

- In **75%** of polling stations observed assisted voters chose their own voting assistant while in **24%** polling stations observed voters were assisted by the presiding officer in the respective polling stations.
- In 92% of polling stations observed, the Secrecy of the ballot was adhered to except on instances of assisted voting while in **8%** of observed polling station there was no secrecy of the ballot.

All the voters in the queue by 5pm were all allowed to vote in **83%** of the polling stations observed while in **17%** of polling stations observed there were no queue after 5pm. In **50%** of polling stations observed, observers reported minor problems such as the KEIMs kits hanging during the voting however, they did not compromise the integrity of the election while the rest of the observed polling stations did not have problems during the voting period.

5.3.3. Closing and Counting

- The ballot boxes in all the observed polling stations had seals intact before the count began.
- There was no political party/candidate agent that requested for a recount of the ballot in any of the polling station ELOG deployed.
- The KANU party agent's representatives present signed the declaration of results form in all polling stations observed.
- In all polling stations observed Jubilee Party agents signed the results declaration form. There were no ODM agents during the counting period in **92%** of polling stations observed.
- There was no agent from any other parties apart from those mentioned in the observed polling station.
- In **25%** of polling stations copies of the results forms were not publicly displayed outside the polling station. Minor problems such as disagreements over rejected votes during counting were observed in **25%** polling stations

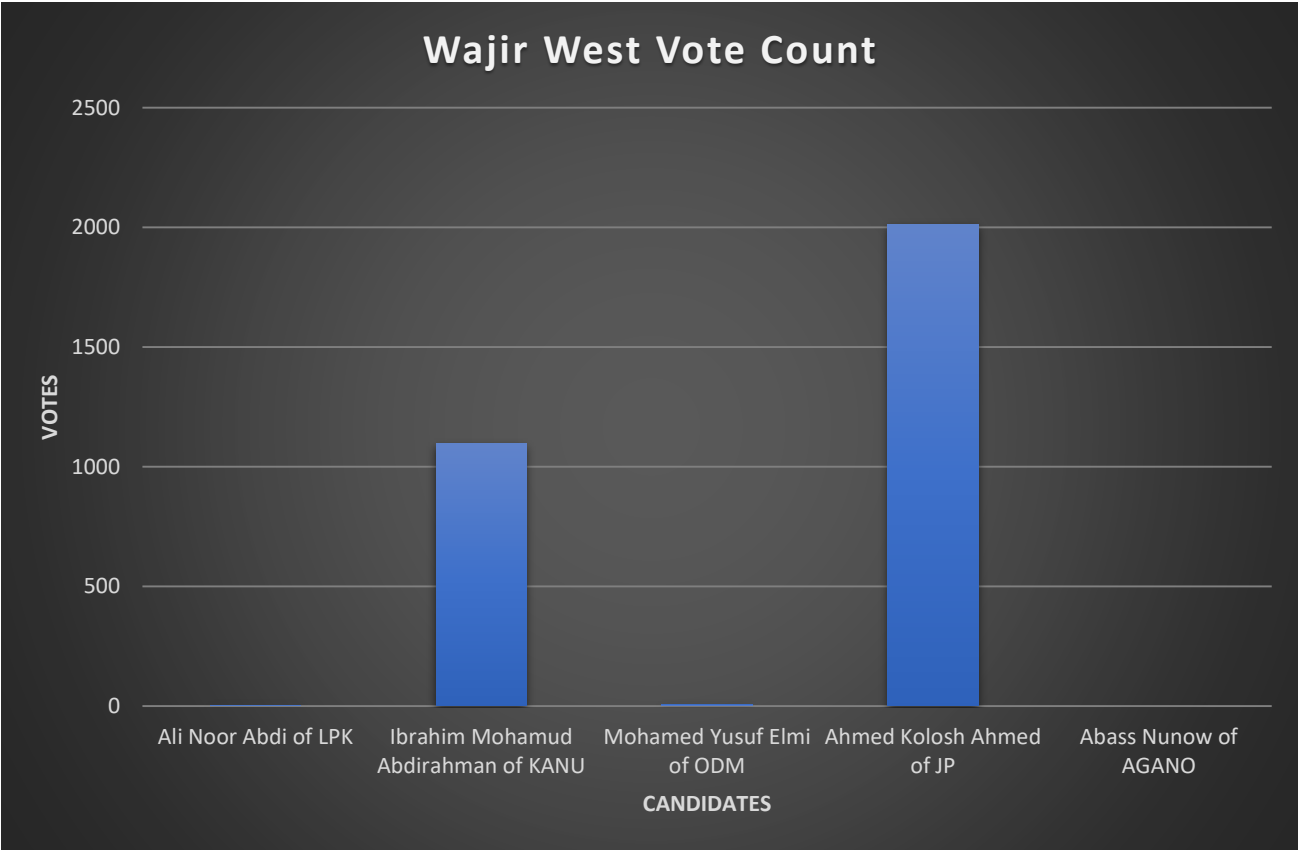


Figure 5.10. Vote Count in Polling Stations Observed in Wajir West Constituency

5.4. LELAN COUNTY ASSEMBLY WARD

Lelan County Assembly seat fell vacant after the death of Hon. Tanui Vincent. There were 5 candidates vying for the seat. Two of the candidates were women while 3 of them were men. The total number of registered voters in the constituency is **8,366** With **29** polling stations. The turnout in the by-election was a **61.46%** in polling stations observed by ELOG observers deployed in the constituency. Further finding for this by election are as follows

5.4.1. Arrival and Set Up

- The Presiding Officers were women in **67%** of polling stations observed in Lelan County Assembly Ward. Out of the total deployed IEBC polling staff **62%** were women in polling stations observed.

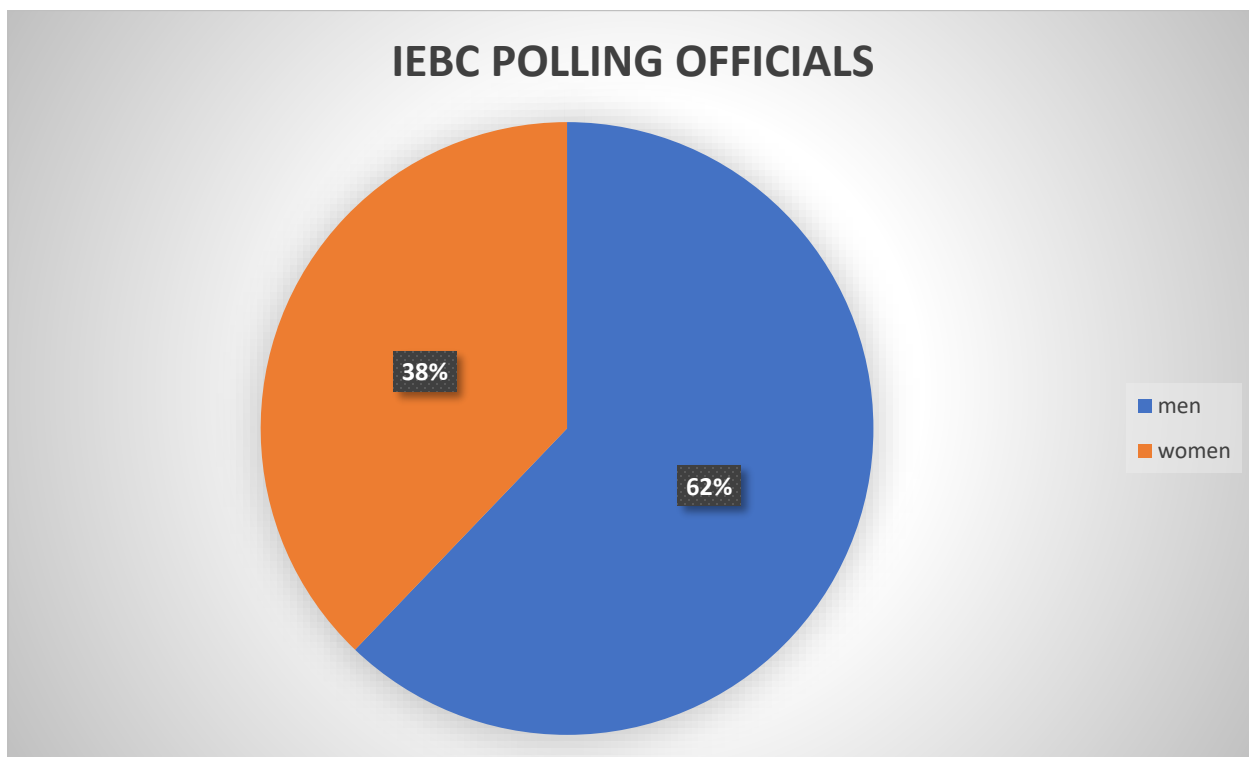


Figure 5.11. Percentage of IEBC Polling Staff in Lelan Ward

- In all polling stations that ELOG observers were present, they were allowed to access the polling station and observe the E-day processes.
- JP party agents were present in **83%** of polling stations observed while Chama Cha Mashimani CCM had their agents in **41%** of polling stations observed by ELOG while the other parties were present in **67%** of the polling stations observed.
- The IEBC made available all the strategic items all the polling stations that ELOG observers were stationed. All polling stations reported to be having Kenya Integrated Elections Management systems (KIEMs) kits.
- In the polling stations observed, **92%** opened on time i.e. 6.15am while **8%** opened between 6.16am to 7.00am.

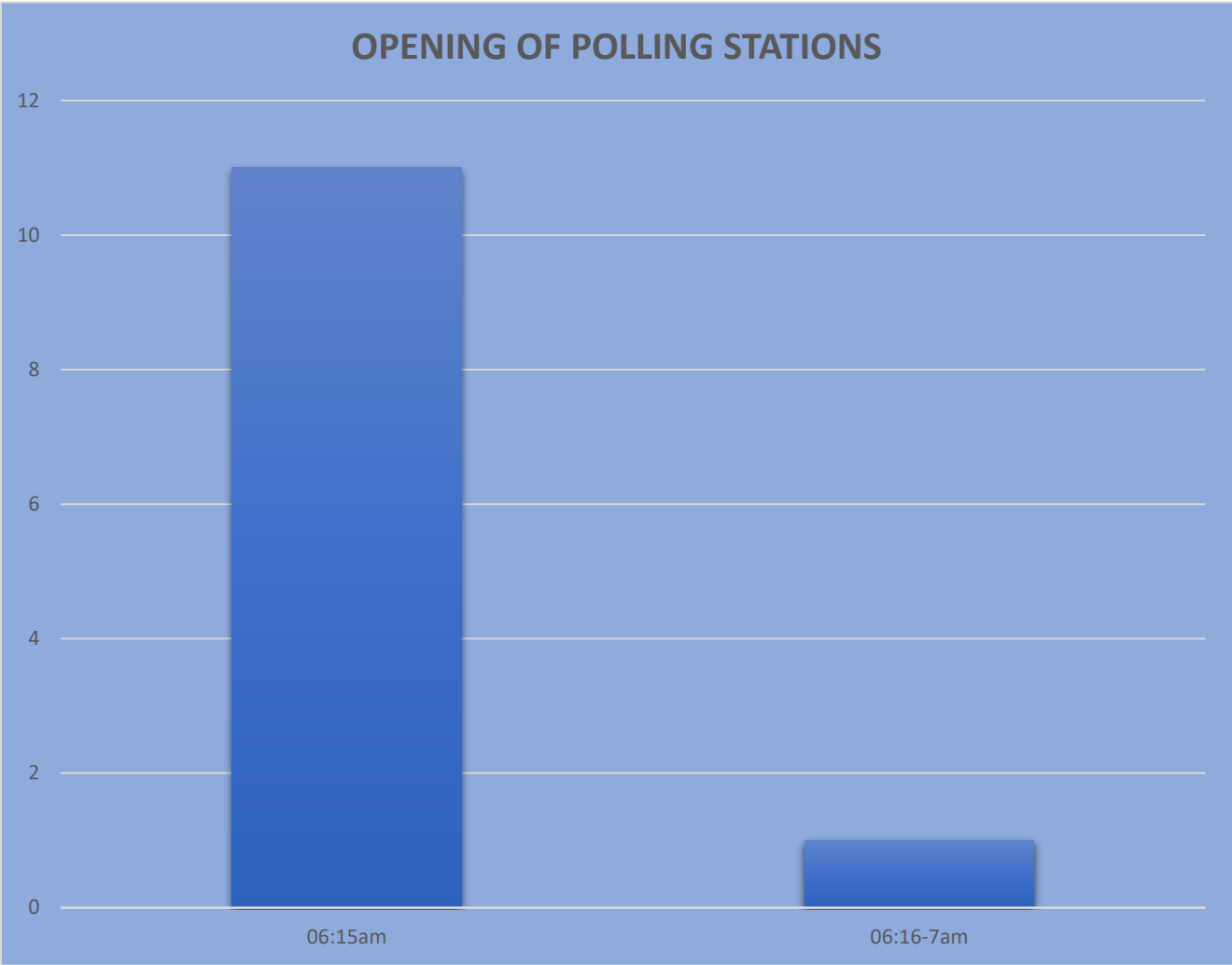


Figure 5.12. The Number of Polling Stations Observed that Opened on Time in Lelan Ward

5.4.2. Voting

- All ballot papers were stamped and voters marked with indelible ink on their fingers in all the polling stations ELOG deployed observers.
- Ballot boxes were shown to be empty in all the polling stations observed, before they were closed and sealed in readiness for the voting process to start.
- All of the observed polling stations had Kenya Integrated Election Management System (KIEMS) kits in place to identify voters during the voting process, there was no failure of KIEMS in the observed polling stations,

- The Secrecy of the ballot was observed in all of the polling station, with a voting booth set up so that voters can vote in total privacy.
- In all of the polling stations observed, there as one (1) ballot box for all the positions in contestation.
- Ballot boxes were shown to be empty in all the polling stations observed, before they were closed and sealed in readiness for the voting process to start.
- In **42%** of polling stations observed, some voters (1-25) were not permitted to vote with reasons ranging from being in the wrong polling station to lacking proper documentation to identify themselves as voters in the polling stations.
- There were some voters (1-25) who were assisted to vote in **67%** of polling stations observed. Out of the assisted voters in **75%** of polling station observed, some were women. There were no assisted voters in **17%** of polling station observed by ELOG.
- Some voters (1-25) in **50%** of polling stations observed were manually verified after not being able to be confirmed by the KIEMS Kits. In **75%** of polling stations observed assisted voters were allowed to choose their voting.
- All the voters in the queue by 5pm were all allowed to vote in all of the polling station. In 92% of polling stations observed, observers reported no problems during the vote that could compromise the integrity of the election.

5.4.3: Closing and Counting

- The ballot boxes in all the observed polling stations had seals intact before the count began.
- There was no political party/candidate agent that requested for a recount of the ballot in any of the polling station ELOG deployed.
- The JP party agent’s representatives present signed the declaration of results form in all polling stations observed.
- In **11%** of polling stations observed, CCM party agents did not sign the results declaration form while in **89%** the declaration forms were signed by CCM agents.
- The other parties not mentioned did not sign the declaration form in **25%** of polling stations observed while in **75%** of polling stations that ELOG observed the agents signed results declaration form
- In **92%** of polling stations a copy of the results form was publicly displayed outside the polling station.

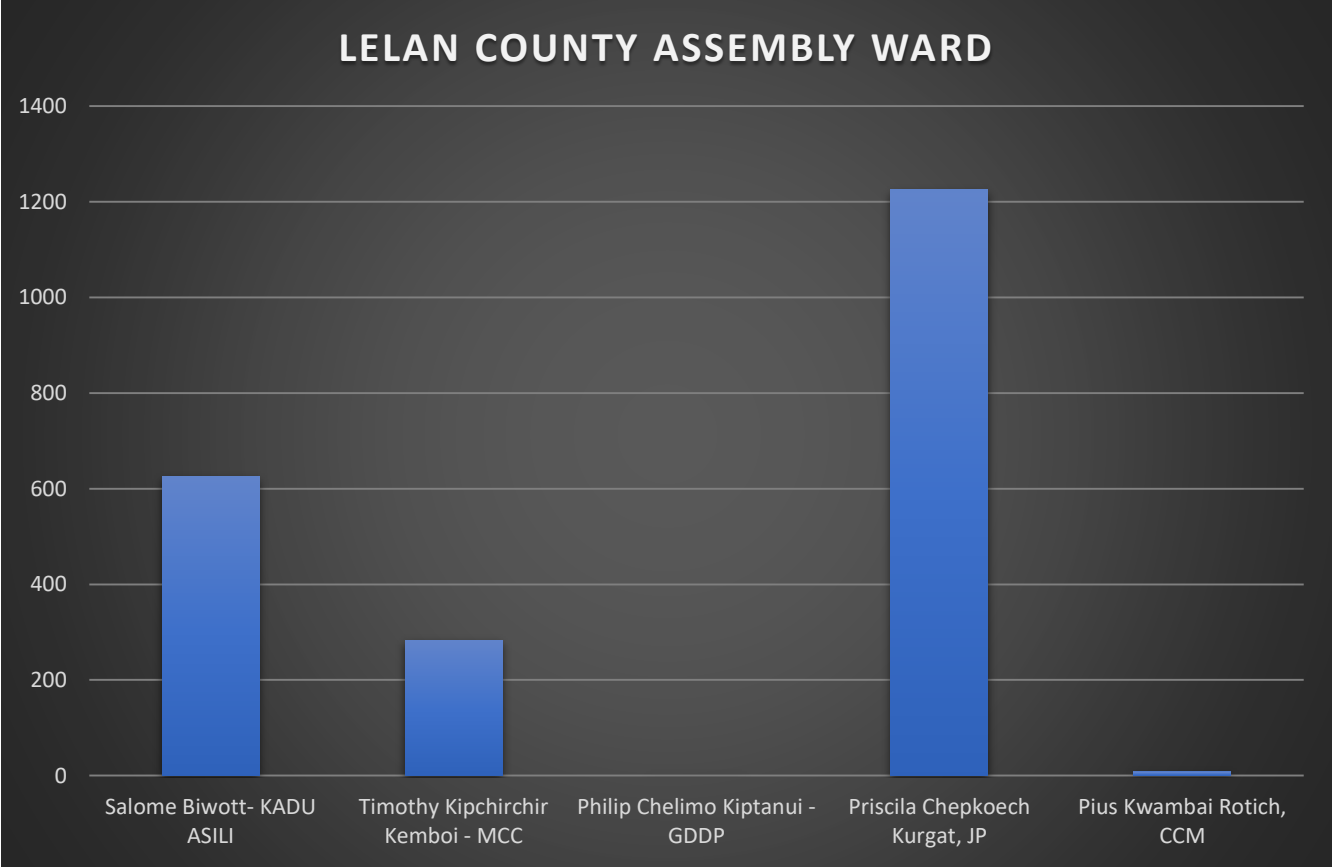


Figure 5. 13. Vote Count in the Polling Stations Observed in Lelan Ward

5.5. CRITICAL INCIDENTS

The following is an account of incidences reported by ELOG observers on the By-Elections in Embakasi South, Ugenya and Lelan Ward.

5.5.1. Observers not Permitted to Observe

There were a few incidences of observers not being allowed in the polling station for instance in Ugenya, Anyiko Primary school, but the constituency supervisors came in handy to assist them in accessing the polling stations.

5.5.2. KIEMS Kits not Functioning Properly or Missing Entirely

a) Embakasi South Constituency

In most of the polling station, the KIEMS initially failed to function but the IEBC Officials either replaced or fixed the kits.

b) Ugenya Constituency

In Nzoia Primary school and Nyaharwa polling station in West Ugenya the KIEMS kits were reported to have failed but it was later fixed by the IEBC officials.

These failures were attributed to low batteries, hanging and lack of power. Nonetheless, the IEBC officials either resorted to fixing or found other kits that worked.

5.5.3. Arrests

A group of youth came into the Jophena polling Center, in Embakasi South Constituency shouting that bribery is going on, one of the political party agents from ODM party was arrested. The voting halted for about 15 minutes because his fellow political party agents caused a lot of unrest calling for the release of the agent. He was later released and voting resumed as normal.

At Chaminade Hall polling center, Embakasi South Constituency another political party agent from ODM party was also arrested on allegedly bribery case but was later released.

5.5.4. Campaign in the Polling Stations' Environment

In Ugenya constituency at Uranga Primary School- polling station ELOG observed ODM party agents seen persuading voters to vote for their candidate.

CHAPTER SIX

6.0. CONCLUSIONS & RECOMMENDATIONS

1. Electoral Campaigns

ELOG recommends that all political actors adhere to the code of conduct and stringent actions be taken against violators by the relevant bodies like IEBC, ORPP (Office of Registrar of Political Parties), Office of the director of Public Prosecution (ODPP) and National Cohesion and Integration Commission (NCIC). Adverse campaigning should be strongly condemned and profiled as such by the media and other actors like CSOs.

2. Civic and Voter Education

ELOG vouches for better planning and timely conduct of civic and voter education programs. While ELOG noted that such activities were carried out, it encourages sufficient resourcing by government and other funding partners. Low voter turnout equally should be addressed.

3. Stakeholder Engagement and Public Outreach

ELOG notes that the success of electoral processes requires a plurality of actors and to this encourages a continuous engagement policy and approach that is more inclusive, regular, open and structured in relation to the conduct of the electoral processes.

Other recommendations

Annex 1: Preliminary Statement of the By-Elections in Lelan, Ugenya and Embakasi South



PRELIMINARY STATEMENT ON THE VOTING DAY OPERATIONS FOR THE JUST CONCLUDED BY ELECTIONS IN LELAN COUNTY ASSEMBLY WARD, UGENYA AND EMBAKASI SOUTH CONSTITUENCIES.

FOR IMMEDIATE RELEASE

NAIROBI, Wednesday, 10th April, 2019 ELOG today released its findings on the conduct of the E-Day processes and results of the just concluded by elections in Ugenya constituency, Embakasi South constituency and Lelan County Assembly Ward. These by-elections were occasioned by Supreme Court's nullification of the victories of the incumbents on the grounds that they were not validly elected while in Lelan Ward, the Member of County Assembly passed on hence the seat became vacant.

Methodology

ELOG's election observation strategies and methodologies are built on the principle that elections are a process and not an event, and that elections belong to the people. Both the strategy and methodology that were employed in this observation mission were anchored on the electoral cycle approach. ELOG deployed a core team to coordinate the election observation stationed at its data center, three Long Term Observers who were engaged for one month to observe the pre-electoral activities in the respective electoral areas, 110 Short Term Observers to observe the E-Day processes and results and 6 roving teams led by senior/expert observers and 3 Tally Center Observers (TCOs).

ELOG comprehensively trained Short Term Observers and equipped them with standardized data collection tools – checklist as well as incident forms that were intended to support evidence based reporting seeking to find out compliance with electoral legal and operational framework. Elections day processes observed included the following: Setup and opening of the polling stations, voting process, closing and counting of votes and tallying and announcement of results. Our observers were required to send in information on the processes promptly through coded text messages. Analysis of the collected information was done at the data center and the findings used to prepare this statement.

PRELIMINARY FINDINGS

The following findings are based on reports from ELOG's Short Term Observers who were stationed in 110 polling stations (Ugenya 24, Embakasi South 74 & Lelan ward 12) during the by-elections.

The average voter turnout in the polling stations observed was 28% in Ugenya, 16.7% in Embakasi South and 59% in Lelan ward.

1. Arrival and Set Up

- . The gender representation of polling staff was **49%** women and **51%** men working as either Presiding officers or poll clerks at the polling stations observed.
- . All the stations observed had fully functional KIEM kits deployed at the opening of the polls
- . **97%** of polling stations observed had Candidates/Party agents present at the time of the opening of the polling stations.
- . The IEBC had all the strategic items at all the polling stations that ELOG observers were stationed.
- . **80%** of polling stations observed opened on time i.e. 6.00am while **12%** opened between 6.01am to 7.00am. **8%** opened after 7am.
- . In all of the polling stations observed, ballot boxes were shown to be empty before being closed and sealed in readiness for the voting process to start.
- . The presence of security personnel in the polling stations was visible in all the polling stations observed.

1. Voting and Closing

- . All of the observed polling station had Kenya Integrated Election Management System (KIEMS) in place to identify voters during the voting process, though in **22** polling stations the kits failed to function properly. The problem with the Kits ranged from the machines getting hung to power supply failures at the polling stations. IEBC sorted out these problems by either troubleshooting the kit or by totally replacing them in the affected polling stations.
- . The secrecy of the ballot was observed in **76%** of the polling stations observed, with a voting booth set up so that voters can vote in total privacy.
- . In all of the polling stations observed, there was one (1) ballot box for all the positions in contestation. Ballot boxes were shown to be empty in all the polling stations observed before they were closed and sealed in readiness for the voting process to start.
- . In **95%** of polling stations observed, voters were assisted using their own choices of assistants. In the remaining **5%** of the polling stations the voters were assisted by the presiding officers but with party/candidates agents looking on.
- . In all the polling stations where there were still queues after 5pm, all the voters were allowed to vote.

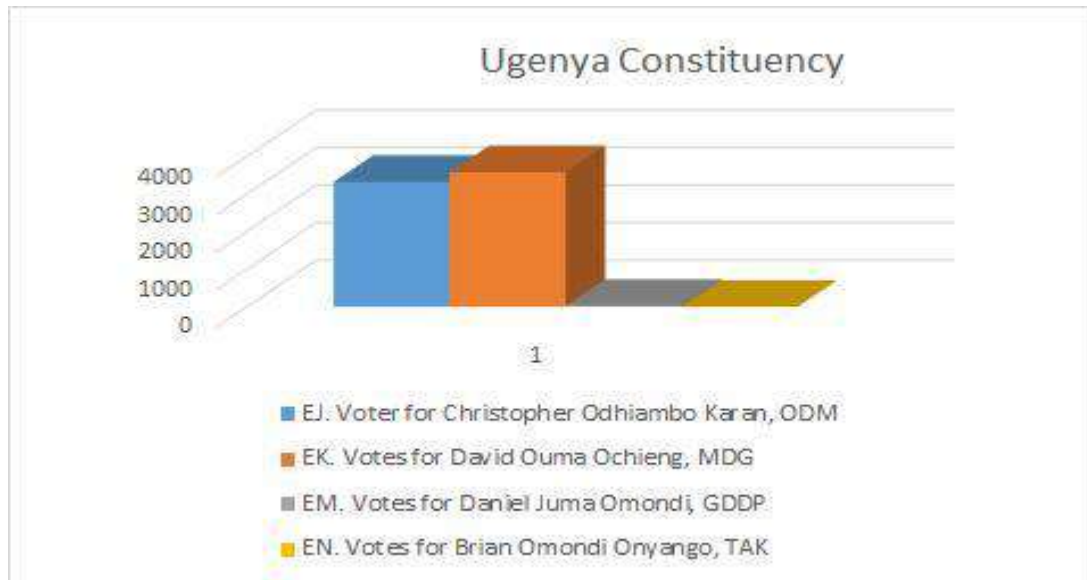
2. Closing and Counting

- . The ballot boxes in all the polling stations observed had their seals intact before the counting began.
- . No political party/Candidate agent requested for a recount of the ballot once the count was concluded in all the polling stations where ELOG observers were present.
- . **98%** party agent's representatives present signed the declaration of results form in the stations observed.

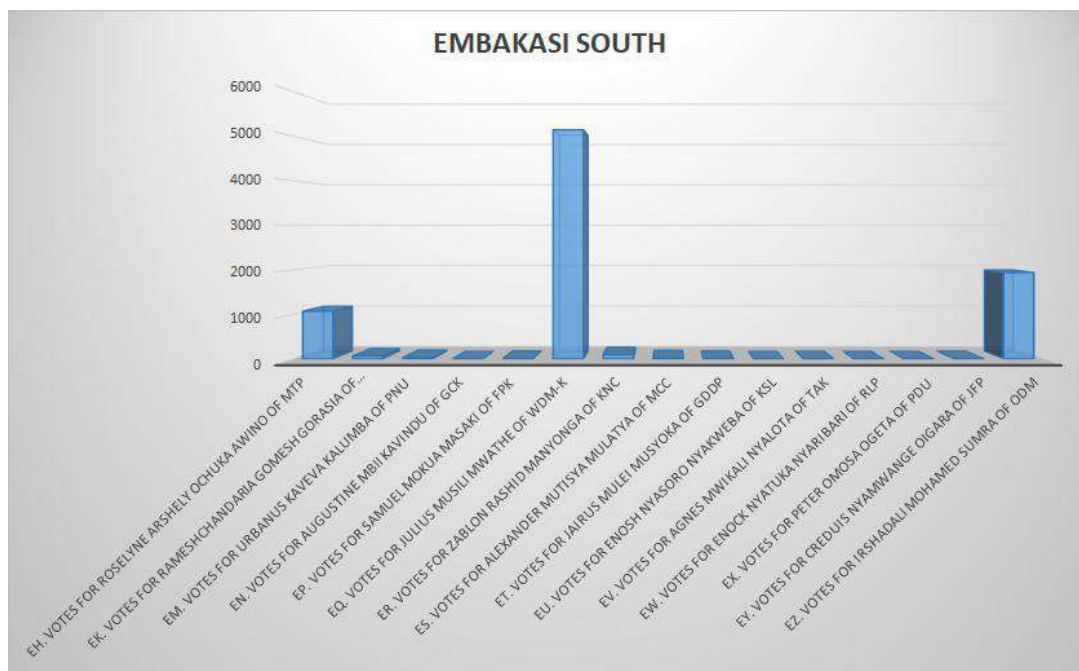
- . In **98%** of polling stations observed, a copy of the results form was publicly fixed outside the polling station.

RESULTS COUNT

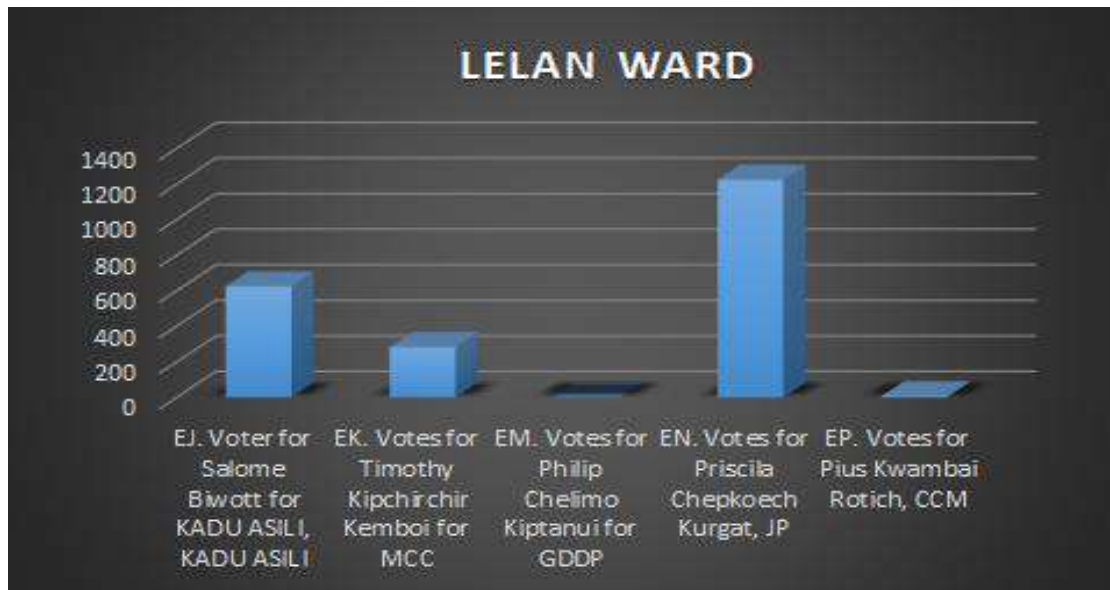
Below are charts indicating the vote count (results) in Embakasi South and Ugenya Constituencies, and in Lelan Ward as reported by ELOG observers.



Vote Count Ugenya Constituency Source: ELOG 2019 By-Election Report



Embakasi South Constituency Vote Count source: ELOG 2019 By-Election Report



Lelan County Ward results Source: ELOG 2019 By-Election Report

CRITICAL INCIDENTS

The following is an account of incidences reported by ELOG observers during the by-elections Day in Embakasi South, Ugenya and Lelan Ward.

a) KIEMS Functionality

Embakasi South:

- . In 20% of the polling station observed, KIEMS kits initially failed but the IEBC Officials either replaced or fixed the kits.

Ugenya Constituency:

- . In Nzoia Primary School and Nyaharwa Primary School Polling Stations in West Ugenya, the KIEMS kits were reported to have failed but they were later fixed by the IEBC officials.
- . These failures were attributed to low batteries, redundancy and lack of power. However, the IEBC officials either resorted to fixing or found other kits that worked.

b) Arrests

- o A group of youth interrupted proceedings at the Jophena Polling Centre in Embakasi South where a party agent was arrested for disruption of proceedings forcing voting to be halted for about 15 minutes after fellow political party agents protested and demanded he be released. He was later released and voting resumed as normal.
- o At Chaminade Hall Polling Centre in Embakasi South, another political party agent from one of the contesting political parties, was also held by police on alleged voter bribery but was later released.

CONCLUSION

Based on the above-day findings and observations by the short term observers, ELOG noted that there were a number of electoral malpractices in the pre-election and election day that affected the credibility of the elections. Voting disruptions during e-day in both Ugenya and Embakasi South created an unfavorable environment for free and fair elections. Despite this, ELOG noted that there were considerable improvements in the management of elections by the IEBC. For instance, where KIEMS kits failed, they were promptly replaced with functioning sets. IEBC officers also moved to take action on candidates whose supporters attempted to disrupt the process. In Lelan Ward Assembly elections, the process was conducted in a much more peaceful and orderly environment.

ELOG therefore concludes that while it commends IEBC for these improvements, more efforts are still required from the respective stakeholders to address electoral malpractices such as violence, intimidation and voter bribery. ELOG observed that while a number of arrests were made on E-day, the concerned individuals were later released under unclear circumstances. As recommended in the ELOG 2017 Elections Report; *One Country, Two Elections, Many Voices*, the legal framework governing electoral offences must be tightened and made functional if elections in Kenya are to become really Credible, Free and Fair.

ELOG will be issuing a more comprehensive report on the by-elections in due course. For more information on the mission please contact Mulle Musau on 0722753690. Thank you.



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**PRELIMINARY STATEMENT ON THE VOTING DAY
OPERATIONS OF THE CONCLUDED WAJIR WEST
CONSTITUENCY BY-ELECTIONS**

FOR IMMEDIATE RELEASE

NAIROBI, Friday, 26th April 2019 ELOG today released its findings on the conduct of the E-Day processes and results of the just concluded by-election in Wajir West Constituency. This by-election was occasioned by Supreme Court's nullification of the incumbent's election through petition 26 of 2018 in which the court found that the election was not conducted in accordance with the constitution.

METHODOLOGY OF ELECTION OBSERVATION

ELOG's election observation strategies and methodologies are built on the principle that elections are a process and not an event, and that elections belong to the people. Both the strategy and methodology that were employed in this observation mission were anchored on the electoral cycle approach. ELOG deployed a core team to coordinate the election observation stationed at its data center, four Long-Term Observers who were engaged to observe the pre-electoral, 13 Short Term Observers to observe the E-Day processes and results, and a roving team led by senior/expert election observers. Stationary Observers were deployed in 12 polling stations across the four wards of Wajir West.

ELOG comprehensively trained its observers and equipped them with standardized data collection tools- checklists as well as incident forms that were intended to support evidence based reporting seeking to assess compliance with the electoral legal and operational framework. Elections day processes observed included the following: Setup and opening of the polling stations, voting, closing and counting of votes, and tallying and announcement of results. Our observers were required to send in information on the processes promptly through coded text messages.

PRELIMINARY FINDINGS

The following findings are based on reports from ELOG's Short Term Observers who were stationed in 12 polling stations in Wajir West Constituency during the by-elections and the roving team which visited several polling stations across the constituency.

The voter turnout in the observed polling stations was 62.7%

1. Arrival and Set Up

- The gender representation of polling staff was 28% women and 72% men working as either Presiding officers or poll clerks at the polling stations observed.
- In 99.3% of polling station where ELOG was present, there were Kenya Integrated Elections Management System (KIEMS) present, and only one of the KIEMS kits was reported to have problems that delayed the start of voting at Hon. Khalifa Primary School polling station.
- 95.2% of polling stations observed had both Jubilee and KANU Candidates/Party agents present at the time of the opening of the polling stations.
- The IEBC had all the strategic items all the polling stations that ELOG observers were stationed.
- 99% of polling stations observed opened on time i.e. 6.00am while 1% opened after 7am.
- In all of the polling stations observed, ballot boxes were shown to be empty before being closed and sealed in readiness for the voting process to start.
- The presence of security personnel in the polling stations was visible in all the polling stations observed, however, 25% of them did not having badge numbers on their uniforms

2. Voting and Closing

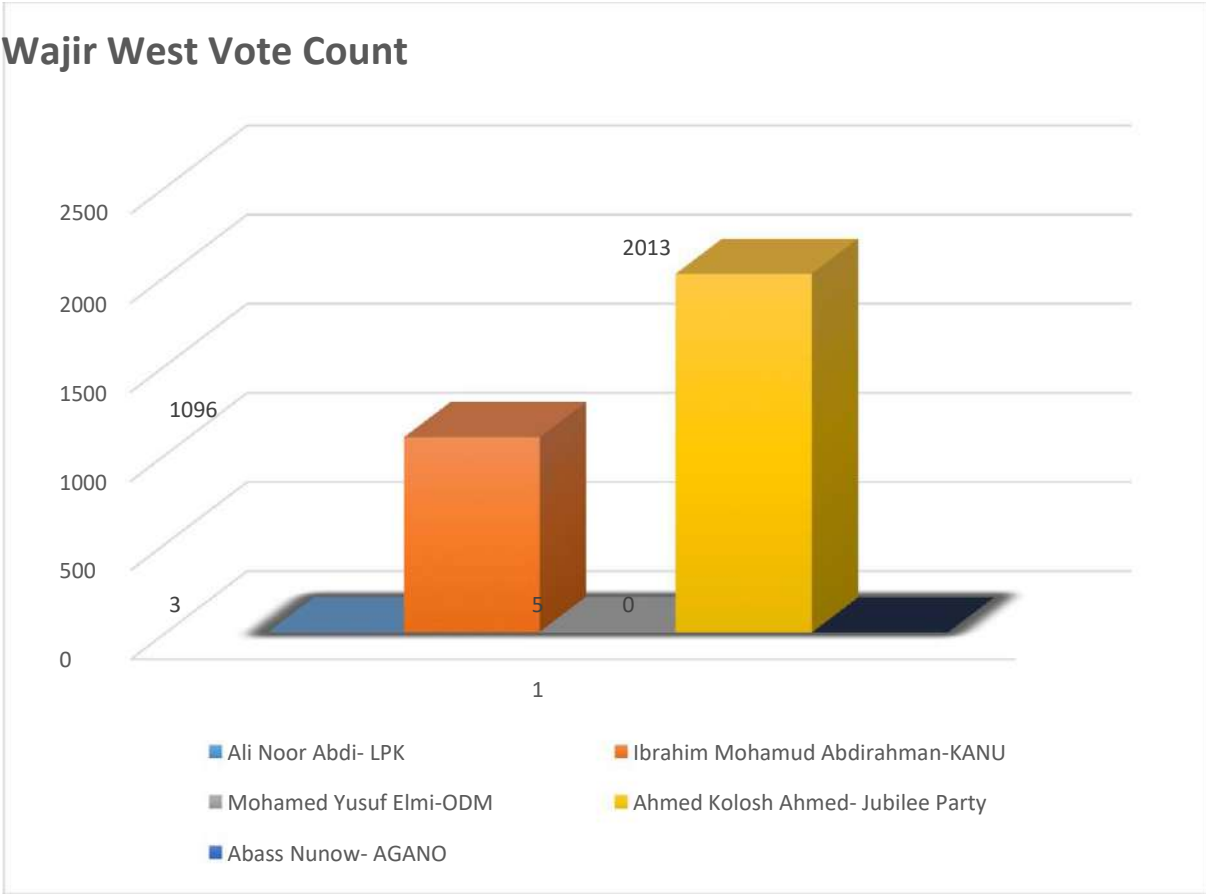
- All of the observed polling station had Kenya Integrated Election Management System (KIEMS) in place to identify voters during the voting process, though in 1 of the polling station the kits failed to function properly due to failure of the power supply that was sorted immediately by IEBC.
- In all of the polling stations observed, there was one (1) ballot box for the position in contestation.
- In the observed stations 33.3% some (1-25) of the voters were not allowed to vote for reasons ranging from lack of proper identification to presence in wrong polling stations.
- In 66.7% of the observed polling stations, some (1-25) of the voters who were not confirmed by the KIEMS were manually verified against the printed voter register.
- In 90 % of the observed polling stations voters were assisted to vote using their own choices (85%) or the presiding officer (5%)
- Of the total number of assisted voters, 50% of the observed polling stations recorded many (26 and over) while the other half recorded some (1-25). The percentage of women assisted to vote was 44%.

3. Counting and Closing

- The ballot boxes in all the polling stations observed had their seals intact before the counting began.
- No political party/Candidate agent requested for a recount of the ballot once the count was concluded in all the polling stations where ELOG was present.
- Both KANU and Jubilee Party agents signed the results declaration forms in 91.6% of the observed polling stations. No other party agents were present.
- In all of polling stations observed, a copy of the results form was publicly fixed outside the polling station.

4. Election Results

Below are charts indicating the vote count (results) Wajir West Constituency in the observed polling stations.



5. E- DAY CRITICAL INCIDENTS

The following is an account of incidences reported by ELOG observers during the by election in Wajir West Constituency.

a) KIEMS Functionality

In Hon. Khalifa Primary School polling station, KIEMS kits malfunctioned, resulting in the delayed commencement of the voting process. The matter was taken up by the returning officer and a replacement of the KIEMS kits was availed. Voting began minutes after 8 am.

b) Observer Restriction

Some ELOG observers were barred from accessing polling stations by presiding officers who demanded introduction letters from IEBC as a prerequisite to their admission. This is contrary to

the IEBC Election Observer Guidelines. ELOG was able to work closely with IEBC officials on the ground to resolve the issues, ultimately allowing all observers access to the polling stations.

C) Protest Over Alleged Election Official Bias

At Kurman Centre Polling Station, voters and agents conducted a protest against the presiding officer and his deputy, alleging a spousal relationship between the two. A further allegation of relation to one of the contestants was made. This brought into question the integrity of the officials. The veracity of the allegations, however, was not confirmed by the field team.

d) Assisted Voters

At Kurman Centre Polling Station, voters were assisted by the Presiding Officer in the absence of party agents. Instead, the presiding officer assisted them in the marking of the ballot papers and displayed the papers to the party agents who were seated. In another polling station, assisted voters audibly declared their intended candidate while communicating their choice to the presiding officer. These two instances call into question the secrecy of ballot in the polling stations in accordance with section 7 of the Election Offences Act.

e) Electoral Violence

In Wajir Girls’ High School, one voter was beaten up by party supporters for allegedly voting for the ‘wrong candidate.’ This violence is in direct violation of section 11 of the Election Offences Act and also raised further integrity issues around the secrecy of the vote.

f) Voter Bribery

ELOG’s roving team reported cases of alleged voter bribery in different parts of the constituency. In Wajir Girls’ High School polling station, there was a reported an instance of a woman, alleged to be from one of the contesting political parties, who was caught bribing voters to cast their votes in favour of a preferred candidate. Interviewed locals confirmed this but no evidence was available to confirm the incidence.

If confirmed, this would be a violation of section 9 of the Election Offences Act on voter bribery.



Signed

Signed

Regina Opondo
ELOG Chairperson

Mulle Musau
National Coordinator

Annex 3: List of Polling Stations

POLLING STATION NAME	ASSIGNED POLLING STATION NUMBER
EMBAKASI SOUTH CONSTITUENCY	
AA VILLA GROUND	5
AA VILLA GROUND	8
AA VILLA GROUND	7
AA VILLA GROUND	1
CHEMINADE TRAINING CENTRE	10
CHEMINADE TRAINING CENTRE	5
CHEMINADE TRAINING CENTRE	8
EMBAKASI GIRLS SECONDARY SCHOOL	14
EMBAKASI GIRLS SECONDARY SCHOOL	13
EMBAKASI GIRLS SECONDARY SCHOOL	4
EMBAKASI GIRLS SECONDARY SCHOOL	2
EMBAKASI GIRLS SECONDARY SCHOOL	10
FREE PENTECOSTAL UZIMA CENTRE	11
FREE PENTECOSTAL UZIMA CENTRE	1
FREE PENTECOSTAL UZIMA CENTRE	7
FREE PENTECOSTAL UZIMA CENTRE	10
FREE PENTECOSTAL UZIMA CENTRE	3
GATOTO PRIMARY SCHOOL	3
GATOTO PRIMARY SCHOOL	2
GATOTO PRIMARY SCHOOL	1
GATOTO PRIMARY SCHOOL	7
GATOTO PRIMARY SCHOOL	4
GATOTO PRIMARY SCHOOL	8
IMARA DAIMA ESTATE GROUNDS	7
IMARA DAIMA ESTATE GROUNDS	11
IMARA DAIMA ESTATE GROUNDS	5
IMARA DAIMA ESTATE GROUNDS	3
IMARA DAIMA ESTATE GROUNDS	1
JOBENPHA COMMUNITY SCHOOL	14
JOBENPHA COMMUNITY SCHOOL	3
JOBENPHA COMMUNITY SCHOOL	7
JOBENPHA COMMUNITY SCHOOL	15
JOBENPHA COMMUNITY SCHOOL	20
JOBENPHA COMMUNITY SCHOOL	17
KENYA PIPELINE ESTATE HALL	12
KENYA PIPELINE ESTATE HALL	5
KENYA PIPELINE ESTATE HALL	14

KENYA PIPELINE ESTATE HALL	1
KENYA PIPELINE ESTATE HALL	6
KENYA PIPELINE ESTATE HALL	13
KENYA PIPELINE ESTATE HALL	4
KENYA PIPELINE ESTATE HALL	16
KWA NJENGA PRIMARY SCHOOL	4
KWA NJENGA PRIMARY SCHOOL	11
KWA NJENGA PRIMARY SCHOOL	9
KWA NJENGA PRIMARY SCHOOL	10
KWA NJENGA PRIMARY SCHOOL	14
MAENDELEO LEARNING CENTRE	6
MAENDELEO LEARNING CENTRE	20
MAENDELEO LEARNING CENTRE	4
MAENDELEO LEARNING CENTRE	5
MAENDELEO LEARNING CENTRE	9
MAENDELEO LEARNING CENTRE	16
MUKURU EDUCATIONAL CENTRE	5
MUKURU EDUCATIONAL CENTRE	10
MUKURU EDUCATIONAL CENTRE	12
MUKURU EDUCATIONAL CENTRE	1
MUKURU EDUCATIONAL CENTRE	7
PCEA PIPELINE	5
PCEA PIPELINE	8
PCEA PIPELINE	12
PCEA PIPELINE	7
PCEA PIPELINE	9
PCEA PIPELINE	16
REUBEN PRIMARY SCHOOL	14
REUBEN PRIMARY SCHOOL	3
REUBEN PRIMARY SCHOOL	16
REUBEN PRIMARY SCHOOL	1
UNIQUE ESTATE GATE	13
UNIQUE ESTATE GATE	4
UNIQUE ESTATE GATE	6
UNIQUE ESTATE GATE	11
UNIQUE ESTATE GATE	2
UGENYA CONSTITUENCY	
MIYARE PRIMARY SCHOOL	2
WALIERA PRIMARY SCHOOL	1

UYUNDO PRIMARY SCHOOL	1
MATHIWA PRIMARY SCHOOL	1
NZOIA PRIMARY SCHOOL	2
UNDHINE PRIMARY SCHOOL	1
SEGA TOWNSHIP PRIMARY SCHOOL	3
LIGOSE PRIMARY SCHOOL	2
LIGALA PRI SCHOOL	1
ST.SYLVESTER ANYIKO PRIMARY SCHOOL	1
URENGA PRIMARY SCHOOL	2
KOMORO PRIMARY SCHOOL	1
MURUMBA PRIMARY SCHOOL	1
HUMWEND PRIMARY SCHOOL	4
SIFUYO PRIMARY SCHOOL	1
YENGA PRIMARY SCHOOL	3
BAR ANYANGA	1
KANYAUDO	1
UKWALA BOYS	2
LIGEGA PRIMARY SCHOOL	1
SIHAYI PRIMARY SCHOOL	1
NYAHARWA PRIMARY SCHOOL	1
HAFUMBRE PRIMARY SCHOOL	1
WAJIR CONSTITUENCY	
ARBAJAHAN PRI. SCH	1
HADADO PRI. SCH	1
LAGBOQOL PRI SCH	1
KALKACHA PRI SCH	1
LAGHDIMA	1
ADAMASAJIDE	1
WAJIR GIRLS HIGH	1
HON. KHALIFA GIRLS	1
BAHATI PRIMARY	1
KANJARA WEST PRIMARY	1
JAGAHIR DAM	1
KORICHA	1
MATHOW	1
BAHATI PRIMARY	1
LELAN COUNTY ASSEMBLY WARD	
YATOI	1
KAPSAINA	1

LABOT CO-OPERATIVE	1
MUGULA PRIMARY SCHOOL.	1
LABOT CO-OPERATIVE	2
KAPSAIT	1
CHEMULANG	1
KAPTALAMWA	1
KAPCHUMARI	1
KIBIRECH	1
KIMNAI	1
KUSERWO	1
KABAI	1

Annex 4. Pre -Election Critical Incident Form

ELOG Pre-Election Critical Incident Form – 2019 By-Elections

RUID:

<<RUID>>

Observer Name/Number :
County/Constituency :
Date of incident :
Time of incident :
Location :

If at any time you witness an event that you believe threatens the integrity of the elections immediately:
 1) Answer the questions below;
 2) Format a coded text message, starting each message with “RU” and your ID code (pre-printed at top); and
 3) Send your coded text message to **0743 089 737**

You may be called to provide additional details. Unlike the Pre-Election Checklist, which is only reported every two weeks, Critical Incidents should be reported immediately at any time throughout the observation process.

Question ZA – Incident Type: Tick one and only one critical incident codes (1 to 10) that describe the incident

- 1 Harassment of voter educators.
- 2 People barred from organizing political meeting during campaigns.
- 3 People being hindered from moving about freely during campaigns
- 4 People being displaced due to security concerns
- 5 Fighting by tribal or ethnic groups over resources
- 6 Disruption of political party meetings or rallies
- 7 A political party candidate or supporter inciting people to commit acts of violence
- 8 Attacks on journalists or media houses
- 9 Publishing/dissemination of leaflets intended to create hostility or fear amongst an ethnic community
- 10 Other

Question ZB – Gender of Victims of Incident (if any)

- 1 Male
- 2 Female

- 3 Both
- 4 I don't know
- 5 Not applicable

Question ZC – Affiliation of Victims of Incident (if any)

- 1 Political Party member
- 2 Election Official
- 3 Member of the media

- 4 Voter
- 5 Candidate
- 6 I don't know
- 7 Other

Question ZD – Gender of Perpetrators (if any)

- 1 Male
- 2 Female

- 3 Both
- 4 I don't know
- 5 Not applicable

Question ZE – Affiliation of Perpetrators of Incident

- 1 Political Party member
- 2 Security Agency member

- 4 Voter
- 5 I don't know
- 6 Other
- 7 Not applicable

3 Government Official

Question ZF: Witnessed Incident

- 1 I witnessed this event myself
- 2 I was told about this event by someone else

Question ZG: Day and Month of the Incident

Format: Day (00-31) and month (01-12)

Example: 10 April = 1004

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Write in answers from above below to format coded text message.

R	U						Z	A			Z	B		Z	C		Z	D		Z	E		Z	F	
Z	G																								

Send your coded text message to 0700000000

In this section, include as much information in narrative form as you can about the critical incident, including:

- ✓ Who was involved? Who is/are the victim(s)? Are they affiliated with a political party or part of the election process (e.g. an observer or election worker)? Who is/are the perpetrators? Are they affiliated with a party or candidate? Who witnessed the incident?
- ✓ Were any persons with disabilities affected by the incident? If so, how?
- ✓ What took place? What type of incident occurred? Have similar incidents occurred in your area before? Is this a trend?
- ✓ Where did the incident occur? Have there been similar incidents in that area?
- ✓ When did the incident occur? (Include date and time.)
- ✓ Why did the incident occur? Were there any warning signs or events that may have led to the incident?
- ✓ How have people reacted? Has the incident caused an increase in tensions? How have different actors responded to the incident?

Description:

Signature

Date


Annex 5:Pre-Election Checklists

Elections Observation Group (ELOG) – Pre-Election **CHECKLIST**

2019 By-Elections

County/Constituency	Elgeyo Marakwet / Marakwet West/ Lelan
Name - Mobile	Gladys Changwony / 0729
Reporting Period	22nd March -29th March, 2019
Reporting Date	Report 1: 10:00 am on 29TH March,2019
ELOG Contact	IF you have a problem call 0743 089 678

- *As part of an effort to observe the 2019 by-elections, you will observe activities in your assigned Constituency*
- *Answer all questions based on only what happens in your assigned constituency and what occurs during the designated reporting period!*
- *Send all **three** Observation Reports via SMS to **0743089737** at 10 am on the assigned date pre-printed on this form.*
- *Start each text message with the letters “PE” followed by your six digit ID code. Follow the text formatting guide provided at the end of each section.*
- *Be non-partisan at all times. Do not do or say anything that could be taken as supporting any political party or candidate. Do not wear any clothing associated with a particular party.*

 **First Text Message to 0743089737 - Answer questions AB through AV. Make a tick (✓) to indicate your answer to each question.**

IEBC Preparations and Voter Education Provision


AD	Have you witnessed or heard of the IEBC conducting election staff trainings in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AE	Have you witnessed or heard of any voter education activities conducted by the IEBC in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AF	Have you witnessed or heard of any CSO conducting voter education activities in your area?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AG	Have you witnessed or heard of harassment of voter educators in your constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AH	Have you witnessed or heard about local media in your constituency airing voter education/voter information outside news coverage?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AJ	Have you witnessed or heard of voter information campaigns aimed at enhancing youth participation in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AK	Have you witnessed or heard of voter information campaigns aimed at enhancing Women participation in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AM	Have you witnessed or heard of voter information campaigns aimed at enhancing PWDs participation in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AN	Have you witnessed or heard of the distribution of money, food or other commodities as an inducement to support a Party/candidates?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)

AP	Have you witnessed or heard of any government restrictions limiting political engagement or dialogue in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AQ	Have you witnessed or heard of any political party or independent candidate buying or attempting to buy National Identity Cards in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AR	Have you witnessed or heard of public officials campaigning for a candidate or political party in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
AS	Have you witnessed or heard of any undue police restrictions on political party activities in your constituency during the campaign periods?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)

Second, Format your Coded Text Message (write in numeric answers from above in spaces below).

P	E	1	2	8	1	4	8	A	D		A	E		A	F		A	G		A	H		A	J		A	K
A	M		A	N		A	P		A	Q		A	R		A	S											

Third, Type out exactly what you see above on your phone and Send Text Message to **0743098737**

 **Second Text Message to 0743098737 - Answer Questions BD through BY. Make a tick (✓) to indicate your answer to each question.**

Violence and Intimidation

BD	Have you witnessed or heard of the use of threatening, abusive or insulting language against a <u>particular ethnic community</u> in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BE	Have you witnessed or heard of the use of threatening, abusive or insulting language against <u>women as candidates</u> in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BF	Have you witnessed or heard of the use of threatening, abusive or insulting language against <u>women as voters or supporters</u> in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BG	Have you witnessed or heard of the use of threatening, abusive or insulting language against <u>person with disabilities</u> in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BH	Have you witnessed or heard of the use of threatening, abusive or insulting language against <u>youth candidates</u> in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BJ	Have you witnessed or heard of people being barred from organising political meetings during the campaigns? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BK	Have you witnessed or heard of people being hindered from moving about freely within the constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BM	Have you witnessed or heard of any attacks against journalists or media houses? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BN	Have you witnessed or heard of displacement of persons or people moving away from your constituency due to security concerns? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BP	Have you witnessed or heard of the publishing/dissemination of leaflets intended to create hostility or fear amongst an ethnic community in your constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)

BQ	Have you witnessed or heard of fighting by tribal or ethnic groups over resources in your constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BR	Have you witnessed or heard of any disruption of political party meetings or rallies? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BS	Have you witnessed or heard of any candidate or supporter inciting people to commit acts of violence in your constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BT	Have you witnessed or heard of the increase of presence of security agents within your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BU	Have you witnessed or heard of other political party candidate or supporter inciting people to commit acts of violence in your constituency? <i>(If YES, complete the Critical Incident Form)</i>	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BV	Have you witnessed or heard of any removing or defacing of a candidates posters, banners or billboards by their opponents?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BW	Have you witnessed or heard of any political party/candidate or community setting up "No go Zones" in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BX	Have you witnessed or heard of any destruction of political party or candidates' property in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)
BY	Have you witnessed or heard of recruitment or arming of militia groups in your constituency?	Yes, Witnessed (1)	Yes, Heard of (2)	No (3)

Second, Format your Coded Text Message (write in numeric answers from above in spaces below).

P	E	1	2	8	1	4	8	B	D		B	E		B	F		B	G		B	H		B	J		B	K	
B	M		B	N		B	P		B	Q		B	R		B	S		B	T		B	U		B	V			
B	M		B	N		B	P																					

Third, Type out exactly what you see above on your phone and Send Text Message to **0743098737**

