

DARUBINI

YA UCHAGUZI

ISSUE NO.7

ELECTIONS FINANCING:

Taming the Excessive Costs



**ALSO
INSIDE:**

Benchmarking Analysis of Participation & Inclusion of PWDs in the Electoral Reforms Process in 2013 and 2017



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Published By: - Elections Observation Group (ELOG)

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MESSAGE FROM THE CHAIR



Greetings on behalf of ELOG.

With the outbreak of the Coronavirus and the ensuing pandemic, the world seemed to have come to a standstill for a while. However, with time, it is becoming evident that this as time continues to pass by, it's become evident that the world has awakened to the new normal presented, and is slowly adapting and moving forward.

Despite the heavy toll that the pandemic has had on the electoral processes, some countries such as Malawi and Burundi proceeded to hold elections while others such as Uganda are also preparing to hold elections as per constitutionally set timelines. In contrast, other countries including Ethiopia and Kenya have postponed their national elections as well their subnational elections. It is imperative therefore, to engage in continuous conversation geared towards sharing experiences and strategies with the intent of addressing the challenges presented under the COVID-19 environment.

Based on this, election observers, State and Non-State actors need to continue to devise ways to move forward with the electoral processes while taking into account:

- ★ *How democratic processes can continue within the current COVID-19 environment;*
- ★ *How the citizens can participate in the processes; and*
- ★ *How to ensure that there is accountability, transparency and inclusivity in the electoral process.*

ELOG is guided by its five key result areas¹. We have been observing the performance of key electoral actors such as the Independent Electoral and Boundaries Commission (IEBC), Parliament, Office of the Registrar of Political Parties (ORPP), the Judiciary and the Media.

Even though electoral reform processes have been slowed as a result of the pandemic, various electoral actors have continued to carry out their duties. For example,

Parliament is still in session and considerations of electoral legislative proposals are currently on-going with regards to the Referendum. The IEBC, in collaboration with the Ministry of Health (MOH) is finalising its operational guidelines for conducting elections in the COVID-19 environment. ELOG commends the respective electoral actors for this.

ELOG in conjunction with E-HORN Network of Domestic Observers held its first webinar to assess the impact of COVID-19 on electoral processes in East and Horn of Africa. Members discussed the measures in which their respective countries had put in place to mitigate the impact of COVID-19 on electoral processes.

In light of this, a key outcome from the meeting was that it would be necessary to interrogate how to balance the health concerns of the citizenry and their democratic rights as enshrined in the Constitution.

As a popular Ashanti Proverb dictates, “*By the time the fool has learnt the game, the players have already dispersed.*” It is imperative for all electoral actors to adapt and move forward despite the challenges presented by COVID-19.

God Bless Kenya!

Regina Opondo

Elections Observation Group (ELOG) Chairperson

¹ ELOGs five key result areas include monitoring and tracking key electoral actors (Parliament, JCE, ORPP, IEBC, JLAC, PPDT); Observation of electoral processes based on ELOGs thematic areas; Sustainable election observation platform; Visibility of the Election Observation Group (ELOG) interventions; Enhanced regional cooperation)



MESSAGE FROM THE NATIONAL COORDINATOR

Dear Citizens,

With just slightly over two years to the next General Elections in Kenya there are justifiable fears that adequate electoral preparations and reforms may not be realised. A number of factors have conspired to create this environment.

The impact of the global COVID-19 pandemic has forced countries to undertake drastic health measures and policies to protect their citizens. Several mitigation measures that have been effected have affected the conduct and management of electoral processes with many of these having to be halted or postponed altogether. Globally a number of countries have gone on to postpone their national and subnational elections while others have had to incorporate stringent measures in conducting these elections.

In Kenya, IEBC has postponed a number of by-elections that were slated to take place within the last three months. The electoral reform process that had gained momentum at the turn of the year has also been slowed down. With the country's statistics on the pandemic not showing any signs of flattening the curve, this situation may be stayed until the end of the year.

The import of all this is that the timelines required to undertake comprehensive electoral reforms will be greatly impacted leading to a situation akin to the 2017 pre-election environment, where last-ditch attempts to change laws and policies created havoc ultimately leading to disputed elections and political tensions thereafter.

Moreover, the major actors mandated with ensuring timely processes have problems of their own. ELOG's meeting with the IEBC commissioners revealed that the Commission did not have adequate funds to conduct its normal activities such as continuous voter registration. It also required more funds to adjust its operations in line with the health protocols outlined by the government.

The Judiciary another key actor in the electoral preparedness process through the Judicial Committee on Elections (JCE) is also out of sorts with a delayed

transition process for its leadership making it redundant in the meantime. The altercation between the Chief Justice and the President over the delayed appointment of judges has not helped matters either.

Perhaps the only small light in the tunnel is presented by the opening up of Parliament where the processing of crucial bills needs to be undertaken. However, political realignments (both in the House and out of it) affecting the ruling party and the opposition players has lately put this also into a spin.

Based on the above, the current debate on holding a referendum before the next elections therefore adds to the prevalent complications. While the requisite debate on the referendum laws is already taking place in Parliament, it is the political debates outside of it that may further aggravate the electoral environment. As we have seen in the past, political tensions, fueled by an already toxic environment (the realignments) and succession politics will most likely create an unfavourable environment within which sober discussions on required electoral reforms can be held.

As such and as indicated elsewhere in this newsletter, critical reforms around the use of money, inclusivity, improved management, voter education and registration and legal framework reforms may not be comprehensively undertaken to the satisfaction of Kenyans.

Elections Observation Group (ELOG) - National Coordinator



MESSAGE FROM THE EDITOR

Dear Reader,

Thank you for joining us once again for another intriguing read. In this issue of the e-newsletter, we take a look at several cross-cutting concerns affecting the electoral environment around the world. This edition's literary voices examine matters of corruption, campaign financing, disability inclusion and the role of mainstream media in elections.

In African politics, money often represents freedom, control and power without which, it is believed that the world would cease to go round. From as early as the 1990s, African states have made commendable efforts to hold open, competitive and inclusive elections. However, the biggest threat to this has been corruption and the excessive use of money in elections. Questions have arisen regarding campaign financing and the sources of money used during electioneering periods. The power of the ballot is deemed to be inconsequential in comparison to the power of money, as money is used to influence the outcomes of elections and democracy. Our guest columnist Henry Muguzi delves deeper into the matter and interrogates possible solutions.

Inclusivity is a cornerstone of democratic elections. Discussions towards successfully conducting elections must sought to enhance accountability, transparency and inclusion of all stakeholders within the electoral environment. In this regard, disability inclusion expert, Paul Mugambi discusses the role that persons with disabilities play in electoral processes whilst assessing the gaps as well as offering solutions. We hope you enjoy the e-newsletter!

Best Regards,



Editor and Program Officer- ELOG



Taming the Excessive Use of Money in Electoral Processes

By Henry Muguzi

Executive Director, Alliance for Campaign Finance Monitoring (ACFIM), Uganda

Whereas the dispensations of multiparty politics within the electoral spectrum have become institutionalised in many African countries, these are yet to deliver meaningful accountability by state institutions and political leaders. This is mainly because electoral-related politics are increasingly perceived as a form of business whereby political parties and candidates invest vast sums of money to get elected. When candidates obtain access to political offices based on the strength of their pockets and how much money they have rather than ideology, they become accountable to themselves and their campaign financiers at the expense of the voter.

The African electorate has witnessed a rise in highly commercialised electoral processes at the expense of electoral integrity, which is sacrificed on the altar of economic interests. The electorate is partly to blame as it tends to commercialise the ballot making it a commodity for sale by demanding that candidates seeking their votes must pay for it. In the pursuit of power, political parties and candidates no longer focus on their programmatic and policy-making roles, which are pertinent to their very existence. Thus, they go to the extent of engaging in inappropriate activities so that they can obtain the volumes of money needed to finance election campaigns.

Elections have also become an avenue for running down national economies. As preliminary studies have pointed out, a recurring situation where national economies experience a dip in Gross Domestic Product (GDP) each time an election is concluded due to excessive spending by key actors involved. For example, it is estimated that during the 2017 Kenyan Elections, the combined spending by the electoral management body (IEBC), political parties and candidates was over \$1 billion. During the 2016 Ugandan elections, the combined campaign spending by political parties and candidates was estimated to be over \$120 million². In contrast, the combined spending during the 2015 Nigerian elections was

estimated to be over \$625 million.

There is too much money circulating in African electoral politics and it is mind-boggling where this money comes from. The excessive flow of money in the electoral processes undeniably influences electoral outcomes, and by extension, the quality of democracy. Underpinned by endemic corruption that bedevils many African countries, political parties and candidates are tempted to accept and receive campaign funding from illicit sources or from individuals or companies with ulterior motives, including cabals of godfathers who are in the business of sponsoring candidates. This has the potential of delivering a country into “state capture.”



There is too much money circulating in African electoral politics and it is mind-boggling where this money comes from.

This is not to mean that money *per se* is bad for electoral politics. Money is understandably an integral part of politics and democratic processes because without it, none of the activities that constitute democracy can be conducted. For example, printing ballot papers and procuring electoral management software needs money. Political parties and candidates need money to publicise their campaign manifestos to the electorate. But money can poison the very democracy it is supposed to advance. And this is where the challenge is when it comes to African democracy.

African countries largely lack the requisite legal and institutional frameworks to control and insulate electoral processes from the corrosive effect of unregulated campaign financing. Campaign spending is shrouded in opacity where citizens do not get to know where the money that political parties and candidates spend on elections comes from and how it is used.

² Cited in a Report by Alliance for Campaign Finance Monitoring (ACFIM) on campaign spending for Presidential and Parliamentary elections 2016.

How Can Excessive Use of Money in Electoral Processes be tamed?


The lack of an institutional and legal framework that regulate the use of money in electoral processes, underpinned by the existence of a money-hungry electorate and individuals/companies that are desirous of bankrolling political parties and candidates for *quid-pro-quo* reasons have bred a monster. This monster has led to the commercialisation of electoral processes that essentially undermines the continent's democratic progression. The question is, what can we do to mitigate this?

I suggest the following interventions.

i. African countries should enact comprehensive election campaign finance laws in accordance with international good practices for mandatory public disclosure of campaign income and expenditure, contribution limits, spending limits, and reporting. Specifically, Kenya must implement the Election Campaign Financing Act, 2013 that was shelved by Parliament in 2017. Tanzania should amend the Election Expenses Act, 2010 to sync it with the current context of campaign financing in the region. Uganda should enact a standalone law to regulate the negative influence of money on electoral outcomes. The campaign finance laws can serve as a game-changer provided that they are rigorously enforced to ensure that election campaigns are financed in a clear, transparent and accountable manner

ii. The Electoral Management Bodies (EMBs) should build a platform for digital election campaign finance reporting and disclosure. This will allow political parties and candidates at different electoral levels to easily submit their campaign finance information either via a website or using dedicated software. Online reporting will enable the EMBs to easily categorise, sort and store the data, which in turn will help it carry out compliance checks. It will also give the institution ability to filter the data and publish it on its website in an accessible format. Likewise, this would be beneficial in promoting the adherence to open data principles of completeness, timeliness and accuracy of information as the civil society and other interested citizens would be able to obtain access to the information published with ease.

iii. The regional domestic election observation networks such as Eastern and Horn of Africa Election Observation Network (E-HORN), Electoral Institute for Sustainable Democracy in Africa (EISA) and the West Africa Election Observers Network (WAEON) should make election campaign finance an integral part of their election observation/monitoring. This should be reinforced through the post-election advocacy efforts. It is crucial to build momentum first at the regional level and later at the continental level, working together with the Department of Political Affairs of the African Union in order to develop standards for regulating campaign financing within the context of Africa.

 **Lack of adequate legal and institutional framework to curb the toxic influence of money on elections has served to undermine the fairness of election campaigns.**

iv. The African Charter on Democracy, Elections and Governance (ACDEG) should be amended to include provisions on election campaign finance including providing for plausible enforcement mechanisms.

v. Political parties must be reminded that they have been entrusted with the most strategic responsibility of modern democracy of identifying persons from which citizens get to elect leaders. To satiate this responsibility, they must desist from engaging in “pay as you go” politics, and focus on playing a vital role in fostering transparency and accountability in election campaign financing, and controlling the negative influence of money on politics.

vi. There is a need to carry out rigorous civic education on the ground aimed at de-constructing the commercialised mindset of the electorate who no longer believe in political ideology but in money. This is going to take dedication, time and funds to convince the youthful African voters that it is ideas and quality of the candidates that matter most in an election, not money. Voters need to appreciate their complicity in sending corrupt and incompetent leaders into political office whose motivation is the privatisation of public wealth as opposed to serving the electorate.

In conclusion, lack of adequate legal and institutional framework to curb the toxic influence of money on elections in several African countries has served to undermine the fairness of election campaigns and made states vulnerable to capture by selfish interests. Political parties have failed to establish an organic connection with the people. They have remained as shells for the political and economic elite to further and protect their selfish interests, hence creating governments of the rich for the rich.

Benchmarking Analysis of Participation & Inclusion of PWDs in the Electoral Reforms Process in 2013 and 2017

By Paul Mugambi

Inclusion and Technical Advisor at Humanity and Inclusion (HI)

Introduction

The right to vote is critical to any democracy. Article 38 of the Kenyan Constitution (2010) and Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) both underscore the equal right of Persons with Disabilities (PWDs) to participate in the political sphere of life. However, in Kenya, persons with disabilities are often unable to cast their vote, stand for political office in their local areas and rarely provided with opportunities to sit and work with public statutory bodies. Moreover, there are also social barriers that hinder persons with disabilities from participating in the electoral process. They include societal attitudes towards disability, stigma and discrimination. Negative attitudes towards disability are often rooted in cultural and social norms, where physical and sensory impairments are often associated with punishments from a higher power. As a result, many persons with disabilities are discouraged from engaging in politics, even if they are educated or aspire to contest and have the requisite resources to finance their election campaigns.

In the latest Kenyan Census (2019), it was reported that the number of PWDs recorded were 918,270. In 2009, the Kenya Census recorded that 3.5% of the population were PWDs. However, estimates from the World Report on Disabilities indicates that as many as 15% of a country's population are persons with disabilities, which would put Kenya's PWDs currently approximately at 7,134, 644 (from a population of 47, 564, 296 million)

KENYA CENSUS REPORT- PWDs

2009		2019	
Disability	Number of Persons	Disability	Number of Persons
Physical	Data Unavailable	Physical	385,417
Visual	Data Unavailable	Visual	333,520
Albinism	Data Unavailable	Albinism	9729

(Source: Kenya Census Report, 2019)

KENYA CENSUS REPORT- PWDs

2009		2019	
Gender		Gender	
Female	Data Unavailable	Female	523,883
Male	Data Unavailable	Male	394,330

(Source: Kenya Census Report, 2019)

Legal Framework

Internationally the rights to political participation is secured and re-affirmed in Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Rights to political participation are further affirmed in Article 25 of the International Covenant on Civil and Political Rights. Locally, The Constitution of Kenya 2010 establishes the principles ensuring the rights of persons with disabilities in political participation both in voting and representation. These rights are enshrined in Articles 54, 55, 81, 82, 97, 99, 100, and 177.

Recently the Special Interest Groups (SIGs) Amendment Bill 2019 has been tabled before the Kenyan Parliament. The bill seeks to give effect to Article 100 of the Constitution of Kenya (2010) that advocates for the representation of Special Interest Groups (SIG) consisting of the youth, women, persons with disabilities, marginalised communities, ethnic and other minorities.

Findings of the 2013 and 2017 Elections

Based on a survey conducted and published by the United Disabled Persons of Kenya (UDPK), Action Network for the Disabled Youth (ANDY), and Humanity and Inclusion (HI),³ persons with disabilities (PWDs) felt that they were better recognised and engaged in the 2013 elections compared to 2017.

There was a lot of interest during the 2013 elections for persons with disabilities due to the promulgation of the 2010 Kenyan Constitution. The 2010 Constitution explicitly sought to affirm the political rights of persons with disabilities by establishing the circumference within which persons with disabilities would be engaged in governance institutions. Further, it also amplified the fact that persons with disabilities had political rights to vote and stand for elective seats.

The 2013 General Elections witnessed a high number of nominated seats in the County Assemblies⁴ being proportioned to Persons with Disabilities as opposed to 2017. In 2017 only 30 out of 47 counties adhered to the nomination rules.⁵

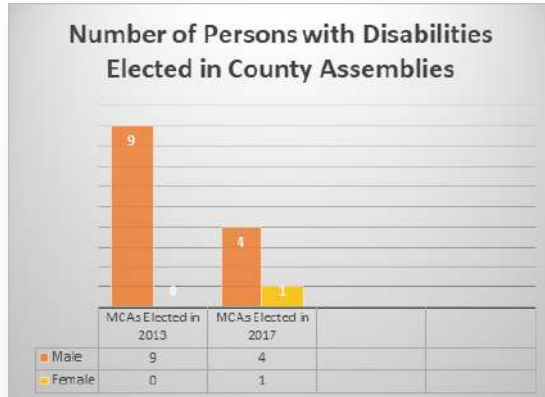


³ The Baseline Survey Report Inclusive Election: Participation of Persons with Disabilities in Electoral and Political Processes in Kenya. (July 2017)

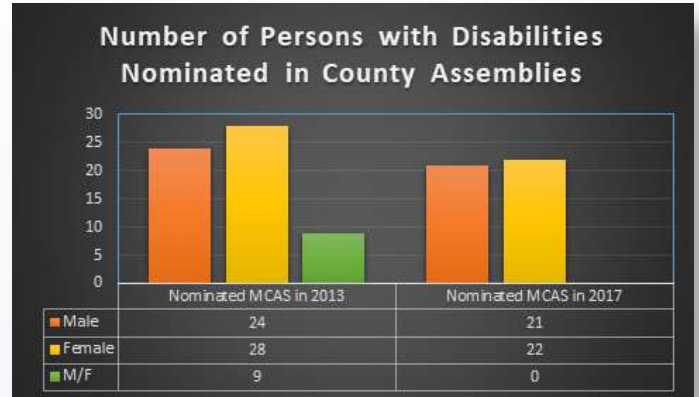
UDPK-Road to Inclusion (2013);⁴ UDPK-Road to Inclusion (2013);⁵ The Kenya Gazette Notice 2017 link below:

<https://www.google.com/url?sa=t&ct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjCmKuuwJ_qAhV5AmMBHdWcAdcQFjARegQICRAB&url=https%3A%2F%2Fwww.iebc.or.ke%2Fuploads%2Fresources%2F5UhuuyoCbE.pdf&usq=AOvWaw1cyRGLvIj54g1fJkQU_i>

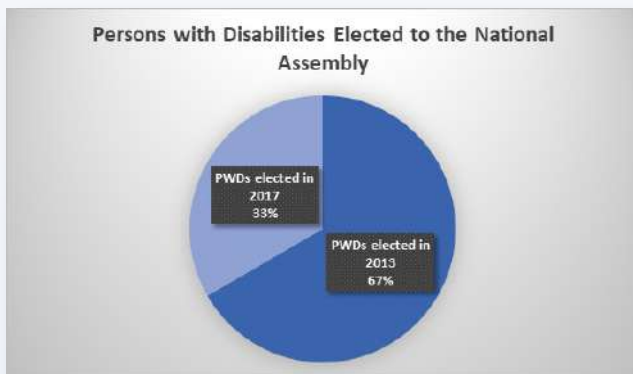
Number of Persons with Disabilities Elected in County Assemblies in 2013 compared to 2017



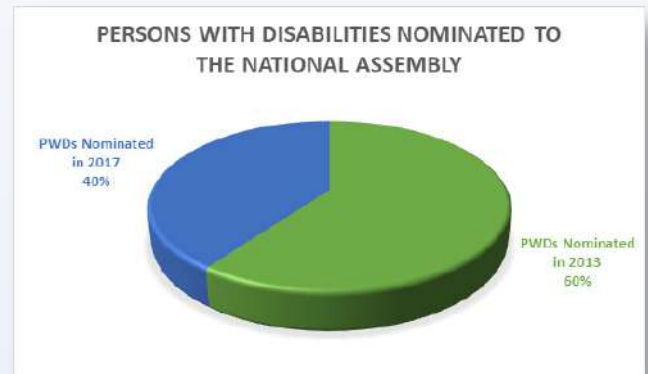
Number of Persons with Disabilities Nominated in County Assemblies in 2013 in comparison to 2017



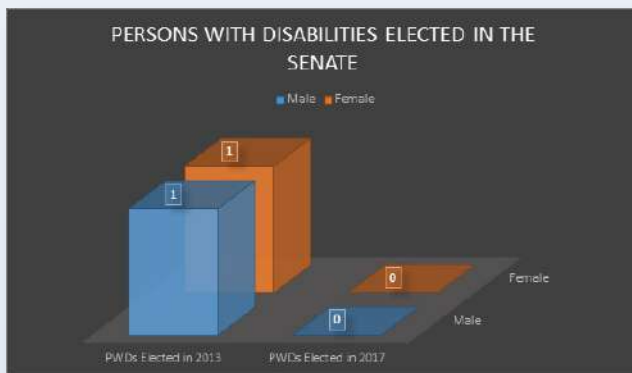
Persons with Disabilities Elected in National Assembly in 2013 compared to 2017



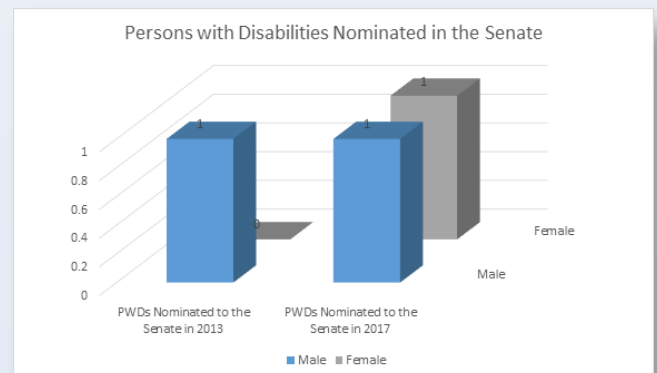
Persons with Disabilities Nominated to the National Assembly in 2013 compared to 2017



Persons with Disabilities Elected in the Senate in 2013 compared to 2017



Persons with Disabilities Nominated to the Senate in 2013 in comparison to 2017



(Source: UDPK Road to Inclusion 2013 & Inclusive Elections Report 2017)



Challenges Impacting The Participation Of Persons With Disabilities In Electoral Processes

The Baseline Survey that was carried out by UDPK in 2013 on the participation of persons with disabilities showed that limited financial resources, discrimination based on gender and disability, and low education levels were key variables that restricted the participation of persons with disabilities in competitive politics. ⁶ This article further discusses some of the challenges affecting the inclusion of persons with disabilities in electoral processes.

Representation in Political and Electoral Seats

The Constitution of Kenya, 2010 (CoK) emphasises participation and active engagement in the political and electoral processes by women, PWDs and other marginalised groups at all levels (voter education, voter registration and nominations). Article 54 states that members of the public in elective and appointive bodies shall be PWDs. This article further provides for progressive implementation whereby at least 5% of members appointed to any public body are expected to be PWDs. The term “*progressive*” stated in the article is a challenge in itself because it implies that there is no urgency to install the mechanism to ensure the achievement of political and electoral participation for PWDs. This has led to minimal to none representation for PWDs in many political party structures, and few voices from the disability community in government.

Inadequate technical capacity to provide reasonable accommodation by electoral actors

In 2013, the Independent Electoral and Boundaries Commission (IEBC) faced hitches in effectively implementing its functions in relation to the participation of persons with disabilities. As much as the voter registration forms had a provision to capture types of disability, the collected data was not used to inform planning during the voting process for ease of accessibility, as well as civic education. The staff also lacked adequate training on how to handle persons with disabilities at the polling stations. However, in 2017 IEBC developed accessible materials for persons with disabilities so that they could participate effectively in the electoral process. Some of the accessible materials developed included Braille and tactile materials for persons with visual impairment and large print materials that were used during civic education exercises. Polling stations were also partially transformed to be accessible to persons with disabilities for example the use of ramps.

Attitudinal Barriers

Persons with disabilities face stigma and discrimination when vying for electoral positions. For example, the educational level requirements to vie for elective and political posts are beyond reach for most persons with disabilities. Majority of the disability electoral candidates and voters have a lower level of education compared to the general electorate. Persons with disabilities might be deterred from moving forward to the University level because of inadequate accommodation. The public frequently stereotypes voters with disabilities who reach the polling and voting stations. They are met by expressions of resentment, unwelcoming attitudes towards their presence and are seen as incapable of carrying out

their activities independently. ⁷ Family members may also have a negative attitude towards persons with disabilities thus minimising their support and assistance to physically assist them in getting to the registration and polling stations.

Costs of Elections

Finances required for candidacy is often a barrier for aspirants with disabilities because of the high fees required for nomination by political parties.

Low capacities by actors to reach out to PWDs through civic education

Although there was an effort to reach PWDs in the 2013 elections through civic education, only a few were impacted. A survey by ANDY shows that 23% of PWDs have never heard of civic education. Disabled Persons Organizations (DPOs) did not reach PWDs on the ground while mainstream civic actors did not provide campaign material in an accessible format such as Braille, large font, tactile and pictorial. Civic educators also faced impediments in reaching persons with disabilities. This is because PWDs did not have access to information as a result of low literacy levels. Some PWDs were also apathetic to the voting process due to a lack of accommodation at polling stations. In light of the challenges faced in 2013, it is commendable that the EMB made efforts to incorporate accessible materials in conducting voter education during the 2017 General Elections.

Physical Barriers

According to the Baseline Surveys conducted by the United Disabled Persons of Kenya in 2013 and 2017, PWDs generally faced similar barriers in their participation in electoral processes. This was despite them living in urban or rural areas. Some of the barriers included:

1. Distance to the polling stations.
2. Inadequate mobility to and from the stations.
3. Dependence on sighted guides and assistants to take them to the polling and registration stations.
4. Inadequate accommodation strategies such as ramps and availability of sign language interpreters.
5. Inadequate provision of accessible materials for visually impaired persons such as Braille and tactile ballots.
6. Long queues which deterred voters with disabilities from participating in the electoral process.

Double and Multiple Discriminations

Women and girls faced double discrimination because of their gender and disabilities. This further restricts their access to political and electoral opportunities in comparison to women and girls without disabilities.

⁶ UDPK–Road to Inclusion (2013)

⁷ The Baseline Survey Report Inclusive Election: Participation of Persons with Disabilities in Electoral and Political Processes in Kenya. (July 2017)

Key Recommendations For Future Elections And 2022 Electoral Process

i. Role of Electoral Actors

Electoral, political and mainstream actors should enhance their capacities to ensure Kenyans with disabilities can equally participate in the electoral process. Thus, the Independent Electoral and Boundaries Commission (IEBC) needs to devise ways in which to increase the number of Kenyan voters with disabilities. This can mainly be achieved through targeted voter education in addition to ensuring accessibility to most, if not all polling stations.

ii. Research and Policy Formulation

The policymakers, both state and non-state actors, should integrate research, evidence-based benchmarking as well as program-level experiences to influence policy and practice with regards to political participation for persons with disabilities. They can present legal reform proposals which take into consideration the needs and rights of persons with disabilities like reasonable accommodation and non-discriminatory policies for the benefit of future elections.

iii. Accessible Materials

Likewise, it is critical to consider communication barriers in as far as political participation is concerned. In particular, relaying information in alternative and accessible formats like Braille, large print that are easy to read and understand can help to dispel misconceptions and advance voter education or the political participation of PWDs.

iv. Capacity Building

The state and non-state electoral actors to mainstream disability issues in their programs and practices to ensure transparency, accountability, and inclusion to enhance electoral processes.

v. Knowledge Management

Various actors can identify areas of synergy and collaboration on disability matters. In this regard, perhaps the state and non-state actors should consider forming a technical working group to address disability inclusion issues.

Members can share knowledge, innovations, best practices, lessons learnt, case studies among others based on their experiences, findings and recommendations.

vi. Monitoring and Evaluation

The development of monitoring and evaluation tools and feedback mechanisms such as a social inclusion policy framework by the EMBS would ensure inclusive elections for persons with disabilities.

Conclusion

The question that arises is, as the next electoral cycle approaches, will the electoral process and systems be able to remove the barriers faced by Persons with Disabilities? Will all the polling stations ensure accessibility for persons with mobility impairments? Will ramps be allocated in the polling centres or will the Electoral Management Body (EMB) ensure that all the doors at the polling stations are wide enough to accommodate individuals with wheelchairs? Will the sighted guides or caregivers be allowed to support persons with visual, intellectual and hearing impairments?

The international standards on fair and free democratic elections uphold that the concept of universal suffrage should be observed without any barrier-creating exceptions whether logistical or technical. Political rights are indeed enshrined in the Kenyan Constitution. However, it is incumbent upon the electoral actors to ensure that no one is left behind. The goal is to guarantee electoral actors' commitment to modify the Kenyan election process and programs to include PWDs in matters such as capacity-building, sensitisation and development of solutions that eliminate all forms of barriers in the electoral cycle. More importantly, election observation missions or interventions must include PWDs in their teams as well as sensitising the overall team on matters of disability.



Building Bridges Initiative: An Upcoming Referendum?

The Building Bridges Initiative (BBI) Taskforce team, which was constituted by President Uhuru Kenyatta and Raila Odinga following their March 2018 'handshake', has been meeting for talks on the completion and sharing of the final report. The report, which seeks to address a variety of issues, is in its final stages and is expected soon. The issues that the BBI seeks to address are those of divisive elections, inclusivity, devolution, a lack of a national ethos, ethnic antagonism and competition, corruption, shared prosperity, responsibilities and rights as well as safety and security. The BBI promoters indicated that a referendum would be conducted prior to the 2022 general elections,⁸ while the opposing camps stated that this was unrealistic given the limited timelines and resources.⁹

In mid-June 2020, the National Assembly Constitution Oversight Committee chairman Jeremiah Kioni was also quoted stating that the Referendum Bill, 2019 that would operationalize referendum process would be passed and assented into law by August 2020. This sparked a heated debate on the possibility of holding a referendum before the next elections.

In ELOG's assessment, the earliest time a referendum could possibly take place would be late December 2020 or early next year. Holding the referendum too close to the next polls would greatly hamper adequate preparations of the same considering that a number of the proposals targeted for the referendum are critical to the holding of credible elections.

Punguza Mizigo Kenya

After a second re-launch of the initiative earlier in the year,¹⁰ the Punguza Mizigo Kenya (PMK) is now back on the table. The Thirdway Alliance Party stated that it intends to submit a bill upon obtaining more than a million signatures from the citizenry in support of it.¹¹

ELOG E-Horn Webinar

On 18th June 2020, ELOG and East and Horn of Africa (E-Horn) Domestic Election Network hosted a webinar to assess the impact of COVID-19 on electoral processes in the region. The engagement was the first in a series of webinars scheduled to be held in the course of the year. The meeting discussed country experiences as well as the measures that had been put in place to mitigate the impact of COVID-19 on electoral processes. One of

the key crucial outcomes of the meeting was that despite the challenges posed by the coronavirus pandemic, it was necessary to interrogate how to balance health concerns and democratic rights as enshrined in the Constitution.

Judiciary and Executive Wrangles

Back in July 2018, the Judicial Service Commission (JSC) embarked on appointing judges and shared a list of 41 nominees for assent with the President. However, the President withheld his assent stating that concerns had been raised by the National Intelligence Service (NIS) in reference to some of the nominees.¹² In response to this, the JSC moved to Court seeking their intervention on the issue. The Court, in turn ruled that the President's delay in appointing the judges recommended by the JSC was unconstitutional.

Skip to June 2020, and the list of nominees is yet to be assented to, and neither have the nominees been sworn in as judges. Both the Chief Justice and the JSC have intimated intentions to seek a Court order directing the Attorney General to publish the list of 41 nominees in the gazette¹³. In response, the Attorney General urged the High Court not to issue any orders on the same.

Moreover, concerns have also been raised regarding the retirement of the Chief Justice, which is expected to take place in December 2020. There is a lot of interest in who will replace the current Chief Justice, David Maraga. The Judiciary is also facing other challenges such as lack of funds, impending transitions, and a backlog of cases.

ELOG's meetings with the ORPP, IEBC and PPDT

ELOG held inception meetings with the Office of the Registrar of Political Parties (ORPP), Independent Electoral and Boundaries Commission (IEBC) and Political Parties Dispute Tribunal (PPDT) to discuss areas of synergy and collaboration towards championing for electoral reforms in Kenya. During the meetings, the urgency of comprehensive electoral reforms was underlined and additional recommendations on electoral legal reforms were discussed.

⁸ <https://www.nation.co.ke/kenya/news/politics/drafting-of-final-bbi-report-almost-complete-raila-303200>

⁹ <https://www.nation.co.ke/kenya/news/politics/referendum-looms-as-political-foes-differ-on-date-295542>; and <https://katibainstitute.org/there-are-problems-with-the-referendum-bill/>

¹⁰ <https://www.capitalfm.co.ke/news/2020/02/thirdway-alliance-to-unveil-revamped-punguza-mizigo-bill/>

¹¹ <https://www.standardmedia.co.ke/article/2001372629/aukot-to-present-punguza-bill-to-iebc>

¹² <https://www.pd.co.ke/news/national/why-uhuru-has-yet-to-appoint-41-new-judges-7539/>

¹³ <https://www.the-star.co.ke/news/2020-06-18-ag-opposes-fresh-case-on-appointment-of-41-judges/>

ELOG ACTIVITIES



ELOG held an inception meeting with the Political Parties Dispute Tribunal (PPDT) to discuss areas of synergy and collaboration towards championing for electoral reforms.



ELOG held an inception meeting with the Office of the Registrar of Political Parties (ORPP) to discuss areas of synergy and collaboration towards championing for electoral reforms.



*Somewhere inside all of
us is the power to change
the world.*

ROALD DAHL

Member Organisations and Partners

~ Steering Committee Members ~



~ Thematic Members ~



~ Supported By ~

