

Darubini

Ya Uchaguzi

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DISPUTE RESOLUTION

AND PRESIDENTIAL ELECTION PETITIONS



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Greetings from ELOG.

The country heads to the polls in less than two years and the realisation of various electoral reforms is yet to be fully achieved. This is not only the responsibility of the duty bearers and politicians but also the citizenry. The citizenry's continuous participation in the electoral process conversations is important, be it through influencing, sharing their opinions or providing accountability.

ELOG continues to push for timely electoral reforms so that in the immediate pre-election period, the focus would be on the final preparations. It is imperative for the duty bearers to ensure that policies and laws are in place to ensure predictability in the electoral processes.

In light of this, ELOG proposes the following key areas of assessment:

- a. It is important for the duty bearers and other electoral actors to come up with the minimum reform areas that they can comfortably move forward with to ensure credible, peaceful, free and fair elections in 2022.

- b. As the country is less than two years away from the 2022 elections, it is crucial to determine its level of preparedness towards the same by all state and non-state actors including the citizenry.

As a popular Ashanti Proverb dictates, ***"Only a fool tests the river with both feet."*** Electoral actors should not wait until the 2022 General Elections to make all the necessary changes. The current phase is the best opportunity to process the required reforms. All actors should now work in concert on the electoral reform process for purposes of better preparations for the coming election period.

God Bless Kenya!

Regina Opondo
ELOG Steering Committee-Chairperson



MESSAGE FROM
MULLE MUSAU
NATIONAL COORDINATOR

While still deep into the throes of the Covid-19 pandemic, major political leadership realignments have served to heighten tensions sending the country into a near full throttle electoral campaign mode. Despite the elections being more than one and half years away, top contenders for the 2022 elections have already started conducting major rallies around the country even in total disregard of the set out COVID-19 related health guidelines.

This has suddenly put the plans and preparations for the coming elections into jeopardy. While the advent of the Covid-19 pandemic first occasioned the initial delays in processing necessary electoral reforms, new challenges are emerging as a result of this development. Sober discussions on electoral reforms would have required the main actors such as the Electoral Management Bodies, Parliament, Judiciary, Political Parties/actors and the relevant government agencies to undertake and spearhead these engagements. However, with the ruling party already divided over the 2022 succession politics and the main opposition party Orange Democratic Movement (ODM), working within one of these divisions, therefore abdicating their crucial role of a political opposition to the incumbent regime, the objective undertaking of these reforms is

beginning to get into unpredictable headwinds.

In spite of this development, ELOG and a number of other Civil Society Organisation (CSO) actors have continued tracking the progress being made on electoral reforms through engagements with different stakeholders. ELOG has so far organised webinars/meetings with the Independent Electoral and Boundary Commission (IEBC), Office of the Registrar of Political Parties (ORPP), Judiciary, Media stakeholders and CSOs to establish viable pathways towards the realisation of the critical reforms before time literally runs out.

As a citizen election observation platform, ELOG will keep Kenyans posted on the progress of these reforms as well as the state of electoral preparedness of the main actors and the country.

In the meantime, we shall keep sharing critical information obtaining from the electoral environment through our periodic Darubini ya Uchaguzi newsletters.

Keep reading, stay informed!

Mulle Musau
National Coordinator



MESSAGE FROM
HILDA N. MULANDI
EDITOR AND PROGRAM OFFICER

Dear Reader,

Thank you for joining us once again for another captivating read in our eighth issue of the *Darubini ya Uchaguzi*.

Each individual is driven by an urge to know, discover, and demystify various facts and issues in their respective environments. Our newsletter is no exception. We strive to share information that provides a broad spectrum of insight on issues impacting the electoral environment. In our current guest column, we feature Dr. O'Brien Kaaba from Zambia, who assesses two groundbreaking legal cases that have set precedents for presidential election petition cases in the African continent. He discusses the Kenya and Malawi Presidential Election Petitions as well as the implications thereof.

Additionally, we also feature the Chairperson of the Political Parties Dispute Tribunal (PPDT) as she shares her take on the current implementation status of the electoral reforms agenda and the country's electoral preparedness as it heads towards the 2022 General Elections. She further shares insights on the preparations the institution she represents is making towards strengthening it to manage and resolve electoral

disputes before 2022.

Finally, don't forget to check out the electoral news roundup section covering current affairs affecting the electoral environment.

Enjoy!

Hilda N. Mulandi
Editor and Program Officer



GUEST COLUMN

Through the Looking Glass: A Comparative Analysis of Kenya and Malawi Presidential Election Petitions

By Dr. O'Brien Kaaba, Assistant Dean, Research Department of Law - University of Zambia

Elections define a representative democracy and are routinely held across the African continent. They assert the people's capacity to constitute government according to their will and to hold governments accountable. Elections, particularly presidential elections, have often tended to be bitter contests in Africa. This is usually because those who manage to get into the presidential office have access to national resources, power and privileges, which otherwise they may not have. Because of what is at stake, presidential candidates often use unlawful methods to try and win elections. This often leads to disputed elections, which are left to the judiciary to resolve.

Prior to the 2017 Kenyan Supreme Court decision (*in the case of Raila Amolo Odinga and Another v Independent Electoral and Boundaries Commission and Others Presidential Petition No. 1 of 2017*), no judiciary in Africa had invalidated a presidential election. The Kenyan Supreme Court decision was, therefore, ground-breaking and revolutionary in this sense. In February 2020, the Malawian High Court (sitting as a Constitutional Court) annulled the presidential election held the previous year (*see the case of Saulos Klaus Chilima and Another v Arthur Peter Mutharika and Others Constitutional Reference No. 1 of 2019*). The Malawian Court became the first African Court

to follow in the footsteps of the Kenyan Supreme Court.

These two decisions have important lessons about the conduct of elections. Without going into the technical aspects of the judgments, two lessons can be drawn, one focusing on respect for the law and the quality of elections and the other on the role of civil society and election observers in the electoral process.

The two decisions emphatically assert that respect for electoral laws and the entire electoral process matter in order to determine the quality of an election. The mere absence of political violence is not a sufficient measure of a democratic election. In the case of Kenya, before the 2017 Kenyan election, the Elections Act, 2011, was amended to introduce the Kenya Integrated Electoral Management System (KIEMS). This was intended to be used in the biometric voter registration and, on polling day, for voter identification as well as the transmission of election results from polling stations simultaneously to the Constituency Tallying Center and the National Tallying Center.

The transmission of results required the use of standard forms (Forms 34A and 34B). In many instances, the transmission of results was not done as required by the law. No plausible explanation

was given by the Independent Electoral and Boundaries Commission (IEBC) for this. The petitioners alleged that the system was hacked and results tampered with in favour of the incumbent. The Court appointed its own Information Technology (IT) experts to assess

“Quantity is as good as quality”

the IEBC servers and report their findings to the Court. IEBC, in violation of the Court order, declined to give the Court-appointed IT experts access to critical areas of the server.

The Court held that the failures by IEBC were a clear violation of the Constitution and the Elections Act. This caused serious doubt as to whether the election results could be said to be a free expression of the will of the people as required by the Constitution. The Court declined to treat these anomalies as inconsequential and annulled the election.

Concerning Malawi, the main allegation was that the election officers unlawfully tampered with election results by massively altering figures. The Court found that the election results forms which were used to tabulate national figures were pervasively altered unlawfully. Based on the adduced evidence, the Court concluded that several result sheets had results altered using correction fluid (popularly known as Tippex). Some forms were manually amended or lacked signatures of the election officials and several forms inexplicably lacked the signatures of political party agents. Having established this (among other reasons), the Court came to the conclusion that the Electoral Commission failed to preside over a free and fair election as the electoral process was compromised and was conducted

in a manner that violated electoral laws and the Constitution. The Court nullified the election and ordered a new election to be held within 150 days. Following in the footsteps of the Kenyan Supreme Court, the Malawian Court held that the quality of the electoral process matters and emphasised that; **‘quantity is as good as quality.’** This approach is important as it requires the Court to take into account the context in which the election was held in order to determine if, within that context, the will of the people could have been exercised freely.

The two decisions also throw a challenge to good governance, civil society organisations as well as election observers. In both Kenya and Malawi, civil society and election observation reports have led to multifarious questions regarding the credibility of election observation since the reports generally did not raise significant concerns about the quality of the elections. In contrast, the evidence in the judgements pointed to the gross systematic undermining of the electoral process.

Following the two judgements, criticism has been raised regarding the credibility of election observation on both mainstream and social media platforms on its role in certifying elections as credible, peaceful, free and fair. The criticism further alleges that observers gave a veneer of legitimacy to what are often spurious election results. The Kenyan Supreme Court rightly frowned upon this kind of election observation. In both cases of Kenya and Malawi, election observers generally considered the election as transparent or largely reflecting the will of the people.

These conclusions were entirely based on what was observable on polling day, without taking into account the transmission of results. The Court had this to say:



"In passing only, we must also state that whereas the role of observers and their interim reports were heavily relied upon by the respondents as evidence that the electoral process was free and fair, the evidence before us points to the fact that hardly any of the observers interrogated the process beyond counting and tallying at the polling stations. The interim reports cannot therefore be used to authenticate the transmission and eventual declaration of results."

In Kenya and Malawi, election observers successfully used advanced election-day methodologies such as the Parallel Vote Tabulation (PVT) to determine their observation results. This enhanced the citizenry's confidence in the electoral process as they were deployed by independent and non-partisan local observer groups.

However, following the nullification of the primary elections in both countries, the PVT methodology has been placed under the spotlight. This is because there is a disconnect in acknowledging that the presidential elections' re-run was caused by the respective electoral commissions failing to follow the laid-down election-day procedures rather than the results that matched the PVT estimates.

Reflectively, based on the courts' decisions, it is imperative that both domestic and international election observers review their election observation tools. Additionally, they should also set high standards consistent with applicable rules and measure the election quality based on the law and the observation of the entire election process. Furthermore, consideration needs to be made on how the observation of electronic transmissions on the E-day can be successfully undertaken.

Whereas the nullification of the two presidential

elections was hailed as a brave decision with regards to holding and following the rule of law, it has also led to the lack of trust and confidence by the citizenry in the processes and the institutions that represent these processes. Hence, there is a need for collaboration among state and non-state electoral actors in all aspects of the electoral cycle in order to enhance and regain the public's trust in the processes. For example, the judiciary and observer groups could partner in undertaking capacity building training regarding electoral processes to equip its judicial officers with the necessary information that would assist in increasing the public's confidence regarding the institution's capacity in handling electoral matters.

In conclusion, the Kenyan and Malawian judgments should be welcomed as a significant contribution to electoral jurisprudence in Africa. They set a high standard for electoral democracy and hold accountable not only those responsible for the conduct of elections but also civil society organisations that observe or monitor elections.



**Election in
Malawi**



ELECTORAL REFORMS WATCH

Ms. Desma Nungo is the Chairperson of the Political Parties Dispute Tribunal (PPDT). She is an Advocate of the High Court of Kenya with over ten years of post-admission experience and a Senior Partner in the firm of NOW Advocates LLP. She is also a Certified Professional Mediator duly accredited by the Kenyan Judiciary's Mediation Accreditation Committee and an associate member of the Chartered Institute of Arbitrators, UK and Kenya Chapters. She spoke to Darubini ya Uchaguzi's editor Hilda Mulandi.

a) Kenya is currently less than two years away from the 2022 General Elections. What is your take on the current implementation status of electoral reforms?

I would look at the situation from two perspectives: the role that the Political Parties Dispute Tribunal (PPDT) plays in the electoral process and the role of other electoral actors. From a joint perspective, I think this is still a work in progress as there are a lot of reform issues that have been pointed out but are yet to be picked up. After the 2017 elections, PPDT with the support of development partners such as the International Development Law Organization (IDLO), prepared and produced a report on specific outstanding issues that needed to be addressed. The report was informed by some of the challenges that PPDT and other institutions faced. Additionally, it also highlights a number of things that need to be addressed

majorly bordering on legal reforms, such as reviewing the timelines for the hearing and determination of disputes. Although the Political Parties Act, 2011 makes provision for the same within three months, PPDT does not have this liberty as the Independent Electoral and Boundaries Commission (IEBC) also has a similar mandate with different timelines. Thus, the PPDT has to take the IEBC internal dispute resolution mechanism into consideration and work together with the Electoral Management Body. There is a need therefore, to harmonise these timelines. However, this reform issue is still pending.

Another major issue that the institution has faced is the overlapping jurisdictions of PPDT and the IEBC to hear and determine disputes arising out of party primaries. IEBC is constitutionally granted the power to hear and determine those disputes under Article 88 of the Constitution of



Kenya. PPDT is also statutorily empowered by the Political Parties Act to hear disputes concerning party primaries. This worked well in 2017, whereby the PPDT and IEBC had a Memorandum of Understanding (MOU) in order to avoid **“forum shopping.”** This is whereby parties would want to file a dispute but would then opt to test the waters first by initially going to the tribunal. In the event they did not get their way, they would turn to the Commission. It is important to note that this is purely an administrative arrangement that has been held throughout the court process. Still, in order to mitigate against issues that may arise, PPDT has recommended that this be given legal backing and it is currently in progress.

Generally, regarding reform issues and particularly legal reforms, it is a work in progress. A lot of things are still pending before the Justice and Legal Affairs Commission (JLAC) as well as other amendments concerning PPDT regulations.

b) Reflecting on the history and journey of electoral reforms in past years and bearing in mind the lessons learned, what is the PPDT doing differently to ensure that some of the proposed institutional, legal and administrative reforms are implemented before the 2022 General Elections?

Considering the challenges that PPDT experienced in 2017 and what we are currently doing, we produced a report on lessons learned. In addition to this report, we also produced a Stakeholders Perception Report whereby our stakeholders had the opportunity to speak to the issues they felt we needed to address in order to enable us to serve the public in a better manner. In this light, several matters were raised such as building the integrity of the processes at PPDT, registry operations and proper case management. Internally, having looked at all the raised issues, PPDT has achieved a lot thus far.

Regarding integrity, we must all appreciate the fact that it is essential for an institution like PPDT to gain public trust and confidence. Integrity is not just the negation of influence or partiality due to external factors. PPDT appreciates that integrity stems from its processes, registry, and staff members' services, resulting in perceptions that often arise from what is observed. Misperceptions and loopholes create mistrust and a lack of confidence in the process. PPDT has worked with the Ethics and Anti-Corruption Commission (EACC) in its sensitisation programs to address this. We also held a workshop in which we carried out an assessment audit regarding our existing systems, what we have in place, and how we conduct our business. Indeed, we appreciate that much can still be done to build public trust and confidence in the system. As such, we have an audit report on the same and we are working on addressing the issues raised, including strengthening our complaints mechanism. We currently have complaints and suggestion boxes that allow members of the public to express their issues.

PPDT is a fairly young institution and has a service charter that outlines its contractual obligation to the public. Given what we discovered in 2017, we thought we needed to revise the charter, which is now finalised. We have also come up with a Registry Operations Manual and a dedicated Assessment Schedule to ensure proper access to justice. The Assessment Schedule was mainly created due to several issues raised regarding electoral dispute resolution mechanisms' cost implications. Some individuals felt that the legal costs were not uniform and were exorbitant. Therefore, PPDT has come up with a clear and unified mode of assessment of legal fees.

Capacity-building activities for PPDT's members and staff have also been carried out. The tribunal is composed of members who have diverse professional backgrounds. Not all of them are lawyers and most require an induction and capacity



building. This was a need that was identified back in 2017 when some of our members were appointed about a month or so to the elections with no induction but with the requirement to go to court. PPDT has also engaged in active case management with the intent of expediting cases. This was a practice that we picked up so as not to become an adversarial system whereby parties only presented their issues without allowing for active involvement in the matter.

Additionally, PPDT has done a lot to embrace Information and Communication Technology (ICT). We have currently integrated with the Judiciary ICT systems and we have a Users' Committee in which we work together with persons who require our assistance. Through this committee, we are able to listen to the challenges that they go through in their dealings with PPDT and in turn they also receive feedback from us in terms of enhancement of processes.

As PPDT, there is so much we have done, but we still continue to strengthen the institution. However, an area of significant concern is the membership of the tribunal. Currently, the tribunal has only four members as opposed to the required seven members. Therefore, we have three vacancies in this regard and have requested the Judicial Appointments Commission (JAC) to assist in populating these positions so that we are able to work efficiently as well as make preparations prior to the set date of the next elections in the year 2022.

c) It seems that preparations for the 2022 elections have begun in earnest with efforts to strengthen the institutions created by the Constitution to manage elections and resolve electoral disputes. What is your take on the current level of preparedness in the country regarding the 2022 General Elections? What has been different in the

approach towards the preparation for the 2022 General Elections compared to 2017?

Regarding the country's electoral preparedness, my take is that we are not on the safer side yet. This is mainly because we have limited time left before the 2022 elections. When you look at the different institutions involved in the process, for instance, the IEBC, it is not fully constituted at the moment and the positions are not fully populated, which hinders preparedness. On the other hand, the Office of the Registrar of Political Parties (ORPP) currently has a substantive Registrar of Political Parties, Ms. Ann Nderitu, after the National Assembly gave the go-ahead for her appointment to the position. This is a significant milestone considering the previous holders of that office all held it in an acting capacity.

Institutionally, there is a need to strengthen the different institutions, including the PPDT, which also has an incomplete membership by populating all vacant positions. For PPDT, this is a significant area of concern as the institution's operations commence prior to the general elections, especially during the party primaries, nominations or during the preparation of the party lists. Much more still needs to be done to enable the various institutions to operate according to their respective mandates. It is also important to note that the Corona Virus Pandemic also stalled all PPDT processes scheduled in 2020.

Regarding the preparedness by political parties, we have witnessed a **"cleansing"** by various parties in an attempt to identify members or candidates who will vie in different positions come 2022. As such, the political climate has been highly charged. In addition to this, let us not forget the Building Bridges Initiative (BBI), where there has been a lot of talks and focus on matters related to the same and the ensuing possible constitutional amendments. These have had huge effects on the preparedness process. Although they attempt to address some electoral issues, there has not



been a dedicated process towards substantive preparedness. Institutions are purely doing this within their means internally. However, in terms of how institutions need to come together with the leadership's support, this is not being achieved as the focus has been diverted to other matters such as the dissolution of Parliament based on an advisory issued by the Chief Justice of Kenya. From the Judicial standpoint, the Judiciary has been working, and a lot is being carried out internally to prepare for the elections. Even if there are no amendments or reforms, institutions still need to exercise their respective mandates and deliver accordingly to the public.

d) With the emergence of COVID-19, what measures is your institution putting in place to ensure a balance between public health concerns and considerations vis-à-vis democratic rights?

Despite the COVID-19 pandemic and its effects on processes, PPDT has remained accessible to the public. Notably, the institution has been operating through online platforms for the hearing and determination of matters. For instance, when it comes to filing, matters are now filed online. We are also working to integrate with the Judiciary's E-filing platform.

Moreover, PPDT has been conducting proceedings virtually and handling matters from various regions such as Mandera, Wajir and Garissa. In the past, this would have been a challenge because the previous practice demanded that we sit at the tribunal at the Milimani Law Courts in Nairobi. Then parties would file their documents and appear before the tribunal. With the virtual platform, we have witnessed an increase in the number of matters from far off areas in the country.

There are instances whereby parties may also

request to appear physically depending on the sensitivity of the matter or just based on the different party rules. When such requests are made, PPDT conducts physical hearings while observing the requisite COVID-19 health protocols such as maintaining proper distance, wearing masks and sanitising. Although COVID-19 has indeed affected our operations, it is necessary to appreciate the fact that political temperatures have been heated during this period and individuals who wish to gain access to PPDT have still been able to do so.

e) Does PPDT intend to continue with the process of hearing cases virtually in the long-term? Is this something that you are considering putting in place permanently to assist in the devolution process of the PPDT?

Yes, PPDT would want to continue with the virtual hearings as it allows for easy access, especially for persons who are far away. In the past, we experienced challenges as there were persons who resided in regions that were too far and could not travel to Nairobi to have their cases heard.

As you know, PPDT works closely with the Judiciary as we are also under their authority and COVID-19 has made us aware that considerations should be made towards retaining virtual meetings. However, we must also appreciate that this may pose a challenge during some stages such as evidence taking. Although we have tried to embrace it where possible, mechanisms must be devised on how to scrutinise original documents where necessary. All the same, virtual platforms are well received by the public as well as PPDT and it is something we want to embrace moving forward.

The outcry for PPDTs devolution has been noted and we are looking into it. We intend to enhance this by increasing the tribunal's membership. One of the amendments that we are hoping to have in place is the addition and appointment of ad-hoc



members to the tribunal during peak periods to support the tribunal's current members. With the ad-hoc membership, the tribunal would be more grounded in the different regions of the country. This would be beneficial as everyone would not have to come to Nairobi to have their matters filed and heard. We have also been in discussion with and are looking into working together with the court registries in various regions to assist with the receipt of documents. This is in light of the fact that some individuals have indicated that they experience challenges with the virtual processes. However, in order to mitigate this, where a matter arises outside of Nairobi, we have made efforts to travel out-of-station and hear such cases in their respective regions despite the budgetary constraints. We must also appreciate that the tribunal is constrained budget-wise as we have limited financing based on the allocation that is given to the Judiciary. As PPDT, we are pushing for the enhancement of funding so as to enhance the devolution process.

In terms of access, we also have made accommodations for Persons with Disabilities (PWDs) following the state of affairs back in 2017, where only those who had the means to travel got to have their matters heard. In 2017, there was limited preparedness in terms of accommodative support, access to premises and sign language interpretation. PPDT and the Judiciary are currently in talks and working towards addressing these gaps.

f) Any final parting word you would like to share with our readers?

As PPDT, we remain committed towards exercising our mandate in terms of dealing with intra-political party affairs. We know that a lot of happenings occur where political parties are involved and we continue to play our role in ensuring democracy within that particular space. As an institution, we are ready, willing and able to handle matters brought before us to deliver justice at all times.



Political Parties Dispute Tribunal (PPDT). Source: Judiciary Website



ELECTORAL News Roundup

Electoral Actors Preparedness towards 2022 General Elections

Independent Electoral and Boundaries Commission (IEBC)

Recently, the Independent Electoral and Boundaries Commission (IEBC) raised concerns regarding the pace of effecting electoral reforms towards addressing the lessons learnt from the 2017 General Elections in preparation for the 2022 polls, which is less than two years away. For instance, although the Independent Electoral and Boundaries (Amendment) Bill that seeks to amend section 36 of the IEBC Act in regards to reviewing the electoral boundaries has been tabled before Parliament, this is yet to be passed into law, thus affecting the timeliness of conducting crucial electoral processes. With the electoral reforms behind schedule, concerns continue to mount regarding the electoral preparedness measures that will be put in place concerning the 2022 elections.

IEBC Recruitment

The Independent Electoral and Boundaries Commission (IEBC) is currently recruiting staff personnel in preparation for the 2022 General Elections. Among the crucial positions include the ICT Manager previously held by the late Chris Msando, who was slain before the 2017 General Elections were held. Another crucial position is the Supply Chain Manager for Procurement.

In 2017, numerous delays in the procurement of ballot papers for the 8th August polls were observed, forcing the Commission to directly procure for the same instead of undertaking the competitive bidding process. The Commission will also be recruiting a communications and public affairs manager and a communications officer. However, the Commission is still silent regarding the CEO position's recruitment despite the courts allowing the Commission to do so, which continues to elicit concerns in the country.

Parliament

On 21st September 2020, the country was faced with a constitutional crisis after Chief Justice David Maraga recommended the dissolution of Parliament for its failure to enact the two-third gender rule, which caused shock-waves in various quarters. The call for the dissolution of Parliament elicited reactions from the Speaker of the National Assembly, Justin Muturi as well as the Attorney General calling for calm and sobriety in the nation to prevent any unrest.

Despite several legal actions taken to advocate for the law's implementation, nothing has changed thus far. Currently, only twenty-two percent of the positions held in the National Assembly and thirty-one percent in the Senate are represented by women. Further, the High Court on 24th September 2020 suspended the implementation of the Chief Justice's advisory on the dissolution of Parliament after the filing of two petitions challenging the decision by the Judiciary's head in order to allow for the hearing and determination of the constitutional merit of the advice.

In addition to the lack of adherence to the two-third gender rule, Parliament is also yet to address legislative reforms drafted by various electoral actors, among them the Political Parties Dispute Tribunal (PPDT), Office of the Registrar of Political Parties (ORPP), and the Commission (IEBC). Some of the critical bills pending before Parliament include the Referendum (No.2) Bill 2020, Campaign Financing (Amendment) Bill, and the Independent Electoral and Boundaries (Amendment) Bill, the Representation of Special Interest Groups Laws (Amendment) Bill, 2019 and the Election Laws (Amendment) Bill 2017.

NCIC warning against Early Campaigns

The National Cohesion and Integration Commission (NCIC) called upon the police to arrest the political leaders who were suspected of masterminding the clashes that took place

in Muranga County prior to Deputy President William Ruto's appearance at a church fundraiser in Kandara Constituency. NCIC urged politicians to avoid engaging in premature campaigns while making utterances that could plunge the country into violence. The NCIC chair further condemned the clashes that arose in Muranga, pitting two rival camps that saw two persons succumb due to the violence that erupted while three others were hospitalised after sustaining serious injuries. The Commission attributed the incident to the rising political temperatures in the country. It also categorically stated that they had noted with concern the bigotry, hatred and political rhetoric that had slowly degenerated into violence over the past few months because of campaign narratives that could create division and precipitate ethnic violence similar to the Rwandan genocide.

Constitution of Kenya 2010: Marking a Decade of Implementation

On 27th August 2020, the country marked the 10th anniversary of the promulgation and adoption of the Kenya Constitution (2010). Various voices across a spectrum of the Kenyan society came together through webinars organised by various stakeholders such as the Katiba Institute, Youth Agenda, Strathmore University, ICJ-Kenya and Bonavero Institute of Human rights to reflect upon the gains made in the past ten years. The discussions brought together stakeholders from the Government, Civil Society, Academia, and the Private Sector among others. The discussions explored constitutional progress in various topics including inclusive political participation, public participation and the role of civil society as well as the collective, collaborative engagement efforts to champion reforms.

The Referendum

The taskforce released the final Building Bridges Initiative (BBI) report on 21st October 2020. Recently, the ODM leader Raila Odinga had informed the citizenry to brace themselves for



a return of an intense mobilisation process to change the constitution through the BBI. Conversations surrounding the referendum to amend certain sections of the law are still ongoing amidst the marking of the 10th anniversary of the Kenya Constitution (2010). The ODM leader had requested the Commission to prepare for a referendum once the BBI Report was released. Additionally, the IEBC Chair, Mr. Wafula Chebukati, further reiterated that a referendum could be held at any time provided that the process complied with the constitutional provisions and other regulations. It would be imperative to ensure that any amendments made to the Constitution are accompanied by measures to protect the gains made thus far as well as providing remedies to the challenges encountered thus far in the implementation process.

By-Elections Scheduled for December 2020

The Independent Electoral and Boundaries Commission (IEBC) recently announced that the six by-elections that had been postponed in April this year due to the coronavirus outbreak would be held on 15th December 2020. They include Msambweni, Kahawa Wendani, Kisumu North, Dabaso, Wundanyi/Mbale and Lakeview wards. The Commission further announced that the commencement of campaigns in the respective wards would be held from 15th October 2020 to 12th December 2020. The campaign timelines were further set to run from 7:00 am to 6:00 pm daily. IEBC further reiterated and cautioned the aspiring candidates to adhere to the Ministry of Health's laid-out protocols to deter the spread of COVID-19 during the campaigns and subsequent polls. The Commission is expected to publish the COVID-19 guidelines in respect to the conduct of the by-elections within the coming weeks.

Appointment of Ms. Ann Nderitu as the Registrar of Political Parties

On 24th September 2020, the National Assembly, through a special motion plenary discussion, and following the submission of the Justice and Legal Affairs Committee (JLAC) vetting report to the house, gave the go-ahead for the appointment of Ann Nderitu as the substantive holder for the Registrar of Political Parties position. The motion further discussed and approved the appointment of Ms. Florence Tabu Biryia and Ali Abdullahi Surraw for the positions of Assistant Registrars. The legislators in unison gave their full support to the appointment of Ann Nderitu and described her as an authentic leader with demonstrated merit in the course of her chequered career. Other aspects that set her apart were her academic, leadership and professional credentials and her landmark achievements in various portfolios held in communication, education, public administration, electoral management, and a raft of milestones at the ORPP for the time she was at the helm.

Election Season Preparations in Eastern Africa

The election season in Eastern Africa has begun in earnest with the first country being Tanzania, set to hold its presidential and legislative polls on 28th October 2020, whereas Uganda will hold its elections in January 2021. Other elections are also scheduled to take place in Djibouti, Ethiopia and Somalia in 2021. Ethiopia had postponed its scheduled August elections in May due to the COVID-19 pandemic whereas in June, Somalia postponed its elections scheduled for December 2020 for another 13 months due to the same. In the throes of COVID-19 earlier this year, Burundi and Malawi successfully conducted their elections during the pandemic. Globally, South Korea held its elections while currently, the United States is set to hold presidential elections in November 2020. Kenya is also not left behind as it is scheduled to host its by-elections on 15th December 2020.

ELOG Webinar

On 15th July 2020, ELOG hosted a webinar dubbed *“Kenya’s Reforms Scorecard Ahead Of the 2022 General Elections”* to assess and take stock of electoral reforms that have taken place in the country before the 2022 elections. The engagement was the second in a series of webinars scheduled to be held in the year. The panelists included the Independent Electoral and Boundaries Commission (IEBC), the Office of the Registrar of Political Parties (ORPP), the Political Parties Dispute Tribunal (PPDT), the Senate and Civil-Society Organisations.

The processes under focus during the meeting included the Building Bridges Initiative (BBI), Dialogue Reference Group (DRG), the Punguza Mizigo Initiative (PMI), and the Parliamentary Initiatives (PI) that sought to bring changes as far as the electoral processes were concerned. Some of the key crucial outcomes of the meeting were that further engagements need to be undertaken

with and by electoral actors to develop the necessary strategies within the thinning window of opportunity presented so as to inform the electoral processes prior to the 2022 General Elections.

ELOGs Meetings with the Media Stakeholders

ELOG held inception meetings with the Media Owners’ Association (MOA), Kenya Editors Guild (KEG), The Kenya Correspondents’ Association (KCA), the Civil Society Organizations (CSOs) working in the media sector and the Political Journalists Association of Kenya (PJAK) to discuss areas of collaboration and synergy towards strengthening the role of the media in electoral reporting. During the meetings, the urgency of comprehensive reporting on elections and electoral processes was underlined and additional recommendations towards strengthening the same were discussed.





ELOG ACTIVITIES

ELOG Webinar



ELOG Webinar Panelists among them the Independent Electoral and Boundaries Commission (IEBC) Commissioner, Prof Abdi Guliye discussing the state of electoral preparedness ahead of the 2022 General Elections. Other panelists from top far left include Ms. Ann Nderitu (ORPP), Ms. Regina Opondo (ELOGs Chair), Faith Njahira (Disability Inclusion advocate), Mss. Nerima Wako (Siasa Place), Mr. Felix

Oduor (ELGIA Executive Director), Ms. Lilian Mahiri-Zaja (Election Expert), Ms. Desma Nungo (PPDT Chair), and Grace Kimani (Sign Language Interpreter).

EVENT RECORDINGS

Recordings of recent ELOG events are now available on ELOGs Facebook Page (Election Observation Group)

a) "Kenya's Reforms Scorecard Ahead of the 2022 Election"
<https://www.facebook.com/138567719500107/videos/364607017880645>

b) "Assessing the impact of COVID-19 on electoral processes in East and Horn of Africa."
<https://www.facebook.com/138567719500107/videos/572461560306354>



FORTHCOMING EVENTS

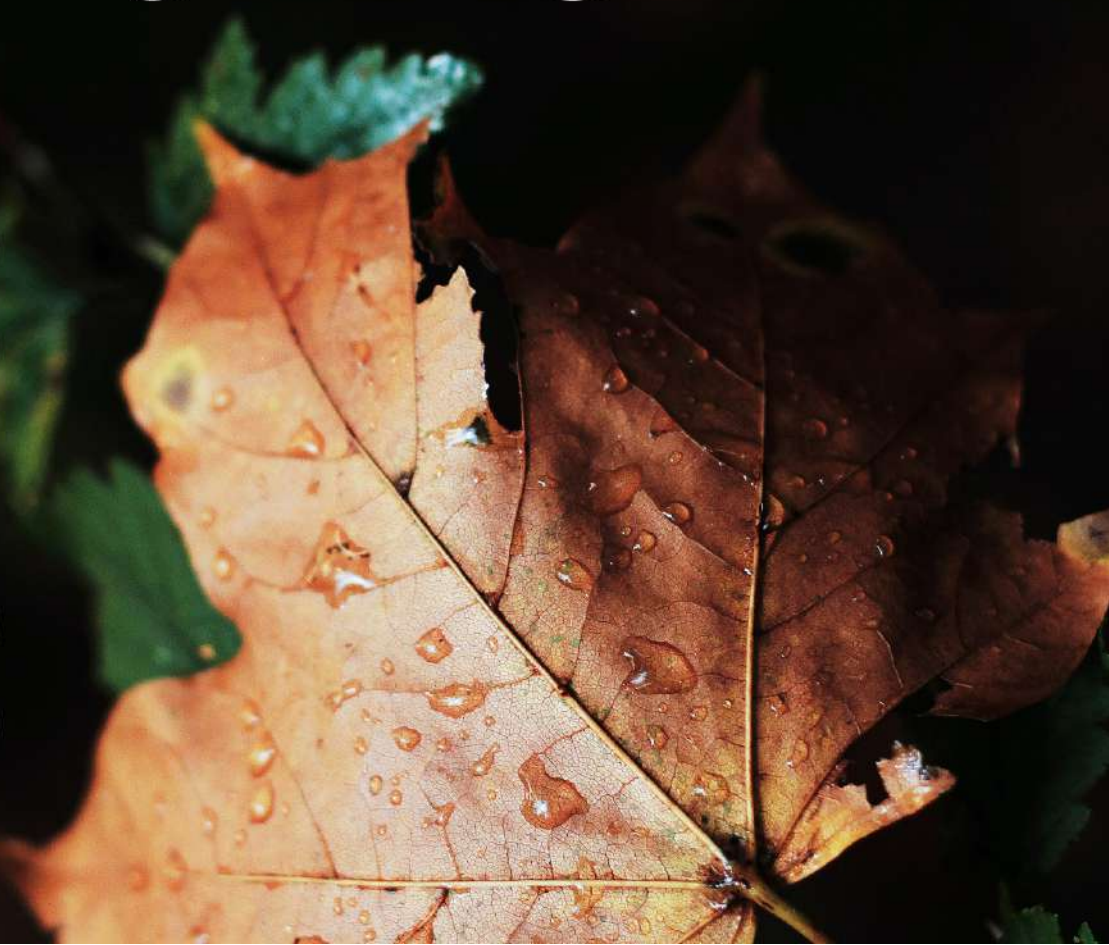


TBC: ELOG will be hosting its third webinar in a series of webinars scheduled to be held in the year to celebrate its 10th anniversary as it was founded on 8th April 2010 when its first MoU was signed. The webinar's date and theme will be shared on ELOGs social media platforms and website once confirmed

*Democracy in the
contemporary world
demands, among other
things, an educated
and informed people.*

Elizabeth Bishop

MUSINGS



Member Organisations and Partners

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