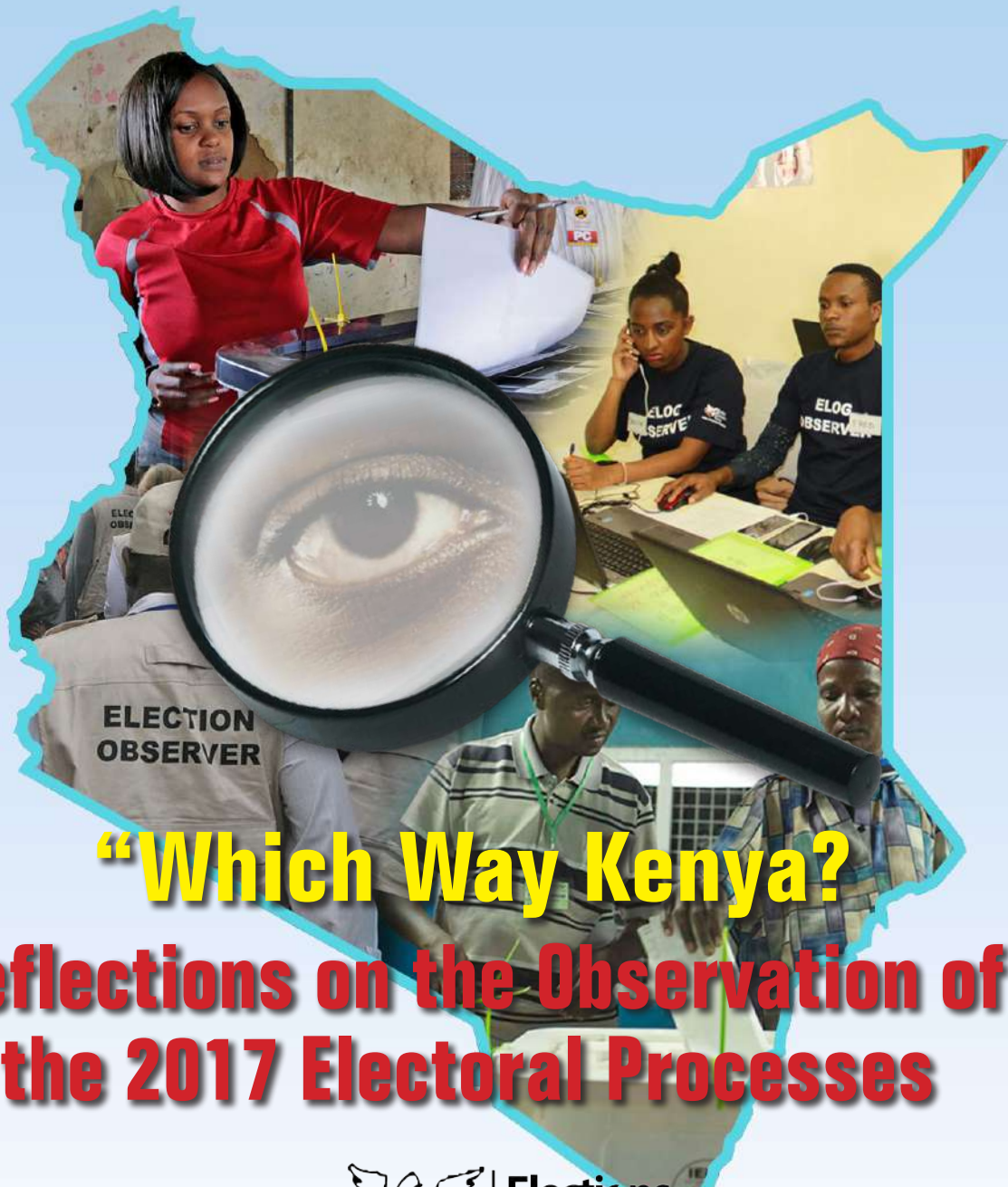


Darubini

DARUBINI YA UCHAGUZI NO. 3 JANUARY-MARCH 2018

YA UCHAGUZI



“Which Way Kenya?”

Reflections on the Observation of the 2017 Electoral Processes



Elections
Observation
Group

CREDIBLE, PEACEFUL, FREE AND FAIR ELECTIONS



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Published by:

Elections Observation Group (ELOG).

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Darubini ya Uchaguzi is a monthly magazine that provides comprehensive information on the Election Process from the onset of the Pre-Election Phase, the Election Day events, and the Post-Election Phase.

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MESSAGE FROM THE CHAIR

One Country, Two Elections, Many Voices!

Greetings, on behalf of ELOG.

The 2017 electoral period, saw a myriad of remarkable occurrences since the promulgation of the new constitution that will remain etched in history for many years. The nullification of the presidential elections was unprecedented in Africa and saw Kenya placed on the map as the first African country, and the fourth in the world to nullify its presidential elections.

ELOG observed both the General Election on August 8, 2017 and the Fresh Presidential Election (FPE) that was held on October 26, 2017. For the FPE, ELOG further enhanced her tools and strengthened aspects of the Observation Mission based on the findings of the Supreme Court and our experience on 8th August 2017.

Nevertheless, the political and electoral environment faced various challenges such as insecurity, political interference, police brutality, and the indefinite postponement of voting in 25 constituencies, tension, and violence among other issues that ELOG observed during the 2017 electoral process. These no doubt also affected the observation mission. However, ELOG still managed to observe and document the process. These findings were released to the public through our reports, media interviews, and press statements.

In 2018, ELOG will release our final report on the 2017 Electoral Process with recommendations to improve the next electoral cycle. Some of the key recommendations mentioned in the final report pertain to electoral reforms, civic education, national dialogue, respect for the constitution, inclusivity, and cohesion among others. As a permanent national domestic elections monitoring platform, ELOG will remain actively engaged in the various electoral processes throughout the cycle, including the impending by-elections.

Elections are a process, and not an event. It is imperative that we continue to strengthen our democracy and to appreciate the gains enshrined in the Constitution of Kenya 2010. ELOG advocates for the key duty bearers and other stakeholders to continue putting in place the necessary measures, and to make the changes based on lessons learnt that would ensure a smooth transition into the next electoral cycle towards the realisation of credible, peaceful, free and fair elections.

God Bless Kenya!

Regina Opondo

ELOG Steering Committee- Chairperson



Some of the key recommendations mentioned in the final report pertain to electoral reforms, civic education, national dialogue, respect for the constitution, inclusivity, and cohesion among others.



MESSAGE FROM THE NATIONAL COORDINATOR

After the Season

Receive our warm greetings.

The 2017 elections season is finally over, and the outcomes for the different contests, right from the ward representative to the presidency determined. However, this has not been achieved without disputes thus leading to petitions filed for various seats, including that of the highest office in the land. The historic nullification of the presidential elections and the subsequent order for fresh elections on the 26th October 2017 stands out as the key electoral happening in all of last year's electoral activities.

While the electoral process has generated a lot of political acrimony, ELOG relentlessly continued to observe the environment through various approaches. In the two election days, ELOG deployed short-term observers (STO) in sampled stations across the country. This was supplemented by an on-going long-term observation (LTO) strategy that started in March and ended in November 2017. It monitored the broader electoral environment and highlighted key stakeholder preparations and implementation of election-related activities. Monitored actors included the IEBC, Political Parties, Media, Police, and the Judiciary.

In this edition of *Darubini ya Uchaguzi*, we share some of the key findings from our numerous missions such as the Sample-Based observation, Hate Speech monitoring, Participation of Special Interest Groups (SIGs) in electoral processes, and Open Electoral Data initiative. We have further shared our findings on an inaugural program that sought to debunk fake news during the elections.

In our guest column, Kawive Wambua, an electoral and governance expert, seeks to demystify election observation and shares his thoughts on its future, especially given the negative public perception it elicited from last year's electoral process. There's more to this edition, including another expert piece by Daniel Mumo on the hefty costs of election petitions as well as our regular columnist Azarius Karanja, with his usual thought-provoking and informative narratives and pieces.

Enjoy the reading.

Mulle Musau
ELOG-National Coordinator



We have further shared our findings on an inaugural program that sought to debunk fake news during the elections.

MESSAGE FROM THE EDITOR

Past the Finish Line

“Reading gives us someplace to go when we have to stay where we are”- Mason Cooley

Election Observation strategies were put in the spotlight during and after the 2017 Kenya Elections. Some of the questions that arose include, what is the importance of election observation during the electoral period? Do election observers have an interventionist role to play where constitutional laws are being violated? Can the country move away from the limitations of election observation to include election monitoring in the observation processes?

In this edition of *Darubini ya Uchaguzi*, two pieces delve to demystify Election Observation including the expert opinion column. We also share an insightful article from Daniel Mumo, a legal expert on the high cost of election petitions, and its bearing on those who choose to tread this path.

Fake News became a phenomenon during the 2017 Kenya Elections. It fundamentally reshaped how information was released to the public. Read more about this in the Advocating for Open Election Data column. Furthermore, read the overall findings from the Sample-Based Observation carried out during the fresh presidential elections as well as the Media Monitoring for Hate Speech (MMHS) project.

To keep you captivated, we have our regular features including the legal review column, the creative story *I See Fire*, and the poetry piece *One Too Many a Voice (Old Kriegler an' his Crew)* among others.

Enjoy!

Hilda Mulandi
Communications Officer



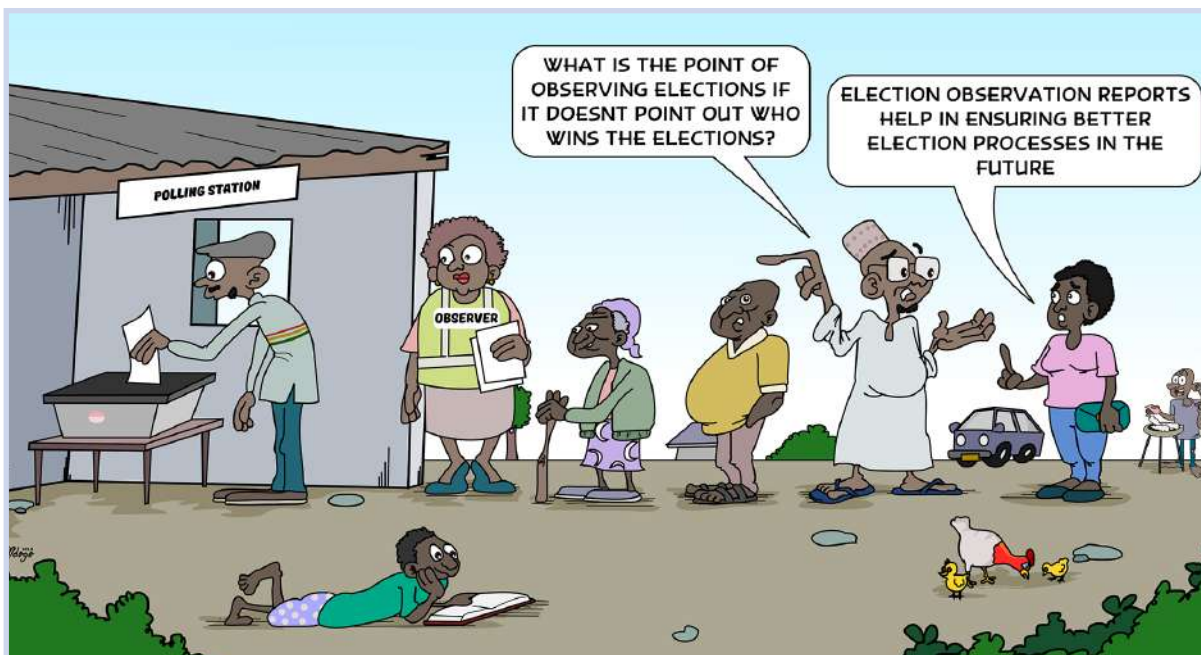
In this edition of *Darubini ya Uchaguzi*, two pieces delve to demystify Election Observation including the expert opinion column.



EXPERT OPINION

Observing Elections – Some Pertinent Issues

By Kawive Wambua-Governance and Public Participation Consultant



Election Observation is perhaps one of the most thankless endeavors whereby the truth or even the middle-ground has no place. In the recent past, the Elections Observation Group (ELOG), *Kura Yangu Sauti Yangu* Group, the *Uchaguzi* Platform, among other observation missions (including the European Union, Carter Centre, and National Democratic Institute) bore the brunt of Kenyans ire, especially after the Supreme Court overturned the Independent Electoral and Boundaries Commission (IEBC) declaration of Uhuru as a winner in the August 8 presidential elections. The observer groups excluding *Kura Yangu Sauti Yangu* had said that the voting and counting processes had gone on well.

Indeed, ELOG in its Parallel Vote Tabulation (PVT) had arrived at the same conclusion as IEBC. This may have been so, but observers had missed the problematic electronic tallying and transmission of results, which the Supreme Court cited as having been irregular.

Observation of elections in Kenya began in a rudimentary way during the 1992 elections. Before, the elections were predictably predetermined by the president and the party. Therefore, the voting and counting process was only a formality. The repeal of Section 2A enabled a widening of the democratic space. The observation of 1992 was deemed rudimentary because it was not a national deployment neither was the concept socialised

entirely in the country. This, however, has changed over the years.

It is prudent to examine some of the observer missions' deployment on E-Day, 8th August 2017. The *Kura Yangu Sauti Yangu* coalition deployed over 500 monitors in all the 290 Constituencies. The Elections Observation Group (ELOG) deployed over 8000 observers (including 1700 PVT Observers) across all 47 counties and 290 constituencies.

The Uchaguzi platform received 12,900 messages from an actual voter population of 15.59 million. The Carter Centre Mission led by John Kerry and Dr. Aminata Touré had more than 100 observers hailing from 34 countries in Africa and around the world.¹ They assessed the electoral processes in 424 polling stations in 185 constituencies, across 39 counties as well as the vote tallying process in 36 constituency tally centers.

These vast numbers represented the use of cutting-edge technology, considerable access, and substantial budgets for the 2017 Kenya Elections. What did the observers miss? What part of the process was not observable? Why is election observation important if it could not point out the winner of the elections? If observers could be ignored or overruled, then why observe? These disturbing questions still abound.

The existing statutes provide that observers should remain non-partisan, impartial and politically neutral in assessing and evaluating electoral processes. They also state that for an organization to observe and monitor an election (or any element



of it) does not indicate that the organization either presumes the election process to be credible or lacks credibility. However, it is important to point out some pertinent issues about election observation.

To begin with, observation is not monitoring. Monitoring is a process that enables persons to intervene within polling and tallying stations to 'right' the voting and tallying process. On the other hand, observation takes note of what happens and reports on the same. Sometimes the reports



are not in real-time and hence they end up as commendations. Moreover, observation as a process is a huge deterrent to electoral malpractices. The observers are accredited by the electoral management body (EMB), which makes them legitimate election officers whose impartiality deters actors hell-bent on subverting the electoral processes.

Observation reports are critical reference materials during the post-election period. These reports could be used in the making or amending of laws, procedures, and protocols to ensure better electoral processes in future. Some electoral methods such as PVT also generate data and information, which if escalated to the Electoral Management Body (EMB) could lead to policy and operational decisions that enhance the credibility of the vote. This is because PVT has inbuilt mechanisms for detection and systematic analysis of trends on the polling day. Crowd-sourcing methodologies employed

by *Uchaguzi* platform (deployed by *Ushahidi*) can identify potential threats to the voting process. Once verified and flagged, the potential threats become fulcrums for rapid response and action by electoral actors.

Observation groups and missions have linkages between themselves, and the EMB for sharing information, consulting, and incidence reporting that positively impacts the management of the electoral process. Religious leaders, civil society actors, and leaders of foreign missions are usually persons of high reputation, and therefore their word would be critical in the making or unmaking of an election process.

This notwithstanding, the question of elections must be understood in the context of a contest for power. In the Kenyan case, it is best understood in the historical perspective of the “winner takes all” conjured up by the first president of Kenya, Jomo Kenyatta in 1965 when the Constitution was

“Nonetheless, it seems none of the main contending parties/coalitions cared about Kenya – the country and its people’s sovereignty.”

changed to impose a unitary party and leadership on the citizens. This was aimed to dissuade dissenting voices. The rift that began then is yet to heal to date. In the last election, it was aggravated by the existence of an indecisive country characterized by a gravely divided body politic.

This had all been observed before and during the electioneering period and a plethora of media reports and commentaries aired through the various channels. Nonetheless, it seems none of the main contending parties/coalitions cared about Kenya – the country and its people’s sovereignty. Indeed these reports were easily profiled, politicized, and summarily trashed. The dominant discourse, therefore, became that of discord and mobilisation for political support which was laced with demagoguery and ethnicised innuendo.

Social media platforms erupted with hate speech and balkanization. Violence, both verbal and physical, reared its ugly head. Politicians had a field day with verbal diatribes while the police were being investigated for violence against citizens during the two voting days (8th August 2017 and 26th October

2017). These also included the periods before, in between, and after that left many Kenyans dead or maimed as well as property worth millions of shillings destroyed.

Going forward, the country’s electoral cycle needs to have an inbuilt monitoring element. The Elections Act 2011 needs to be amended to provide for multi-sectoral monitoring that will be a predication for polling. This should include, among others, an authoritative audit of the voters’ register, an independent audit of the technological processes (including servers and ICT deployments), an assessment of IEBCs readiness for conducting free, fair and credible elections, and the determination of a political environment conducive for polling. These audits should have automated timelines with recovery/resolution spans well stipulated. The results of this monitoring shall be the determinants of whether or not we go for elections – if we are to avoid the historically prevalent cyclic stasis.

¹ <https://www.cartercenter.org/news/pr/kenya-081017.html>





By Eustace Kinyua

LONG TERM OBSERVATION (LTO)

Elections and Election Observation in Kenya

The more things change, the more they remain the same

- Alphonse Karr



The Kenya elections atmosphere has experienced progressive reforms over the years. This might have led to the conclusion that Kenya’s democracy had advanced. However, the dilemma becomes the more we seem to progress, the more the remnants of the past seem to catch up with us.

Election malpractices during the one-party state period were simple and were characterised by the use of force such as stealing ballot boxes or kidnapping the carrier of the nomination papers. Despite the innovative technologies that have been rolled out to curb electoral malpractices, Kenya continues to witness an increase in the same. However, the country continues to reform and make strides towards

improving its electoral processes and enhancing the roles of its duty bearers. Institutions such as the Police have transformed from the era of using force to serving the public. However, the question that continues to haunt this transformational process is whether this change is fact or fallacy? This is based on the use of excessive force and police brutality that was observed in the 2017 Kenya Elections during demonstrations by supporters.

Assigning ballot boxes to a particular candidate was common in the 60s and 70s. This created loopholes in the process which led to rigging allegations of ballot boxes going missing during voting or counting. In this regard, the country made several changes over the years to safeguard the balloting processes. These

modifications included customizing the ballot papers with serial numbers that represented each polling station in order to prevent ballot stuffing. However, rigging claims continue to abound the electoral process even with the tools employed to address the vice.

Electoral timelines continue to be part of the electoral cycle. The most memorable is the single-party era rule that stipulated midday as the deadline to present the nomination papers on the date specified. This deadline continues to apply presently. Other issues that continue to haunt the electoral process from the past include allegations of kidnapped or missing aspirants, as well as attacks meted out on them on their way to present their nomination papers.

The days when the District Commissioners served as returning officers are long gone. The Independent Electoral Boundaries Commission (IEBC) is now the independent election

“ The most memorable is the single-party era rule that stipulated midday as the deadline to present the nomination papers on the date specified. ”



management body constituted to manage all electoral processes in Kenya. However, their independence is still questioned up-to-date because the appointing authority is still the Executive. District Commissioners in the past were accused of being indifferent when electoral malpractices were conducted at the polling stations.

Similarly, accusations of electoral malpractices still proliferate towards the electoral management body’s returning officers.

During the one-party state period, elections were regarded as the Executive’s secret weapon. The executive would call for an election when they felt that the votes were in their favour. Nowadays, various measures put in place over time have led to the safeguarding of the electoral processes. These include the Constitution of Kenya (2010), which outlines specific timelines for the elections, the Supreme Court of Kenya (SCOK) hearings to determine presidential elections petitions, as well as the swearing-in.

The Independent Review Committee (IREC) “Kriegler” reforms, The Inter-Parties Parliamentary Group (IPPG), and the Constitution of Kenya (2010)





among others remain some of the best reforms in the modern times.

Kenyan citizens have remained steadfast in observing and advocating for electoral and legal reforms. Election observation is often confused with election supervision and election monitoring. This is because the three activities are similar based on the data collection process, the analysis of the observation findings, assessment of the quality of the electoral process, and finally publicizing the findings¹. Stricter rules of conduct govern the supervisors,

and monitors compared to observers based on the authority bestowed upon them. Supervision by electoral management officials and government officials is necessary for elections. The same can be said of domestic and international observers too, who deploy their observers to monitor the electoral processes. However, the authority to intervene in electoral processes, which is part of election monitoring is rarely conferred to international observers, although it is conferred to the electoral management bodies.



After every election, the review agenda continues to be canvassed. The piecemeal reforms are yet to address concerns that ail the electoral process. However, the question becomes, “Is a paradigm shift necessary in the reform agenda?” Whenever the agenda is reviewed, it usually seems to take a political direction to safeguard the interests of the law makers and politicians.

The reforms become a favorable topic when the electoral timelines draw nigh. It is imperative that the country moves away from agitating for reforms close to the election year, and rather focus on carrying out the reforms within the first two years after an election. An example is the amendment of the electoral laws, which was witnessed a few weeks to the October 26th, 2017 elections against the Kriegler recommendations.

The observers, in the post-election period, should continue advocating for electoral and legal reforms, focusing on election monitoring rather than election observation. This is due to its interventionist character, whereby the advocacy aspect takes the lead to ensure that electoral reforms are implemented.



¹ The International IDEA Code of Conduct



By Daniel Mumo - Corporate,
Governance, and Tax Lawyer

ELECTORAL COMPLAINTS, DISPUTES AND RESOLUTIONS

Election Petitions: High Costs for Justice



Election Petitions have left an unforgettable mark on the losers who have been left with expensive fines to pay to the respondents. Two costs apply in this scenario which includes Security for Costs provided for under section 78 of the Elections Act and rules 4, and 5 of the Elections (**Parliamentary and County Elections**) **Petitions Rules, 2017** Section for costs, and costs. In the former, they are paid within specific timelines upon the filing of an election petition. For the latter, they are awarded by the trial judge at any stage after the filing of the election petition.

Security for Costs

78 (1) & (2) provide as herein under:

(1) *A petitioner shall deposit security for the payment*

of costs that may become payable by the petitioner not more than ten days after the presentation of a petition under this Part.¹

- (2) *A person who presents a petition to challenge an election shall deposit:*
- a) *One million shillings, in the case of a petition against a presidential candidate;*
 - b) *Five hundred thousand shillings, in the case of a petition against a member of parliament or a county governor; or*
 - c) *One hundred thousand shillings in the case of a petition against a member of a county assembly.*

The requirement that the Petitioner remits security for costs upon filing an Election petition is to restrict vexatious litigants from approaching the court. It also ensures that the party who comes



to court is serious and will be able to pay the costs incurred in the event he/she is required to do so.

The consequences of failure to pay security for costs are provided for under Section 78(3) of the Elections Act. In a nutshell, failure to deposit security leads to an automatic stay of these proceedings pending an application for its dismissal. The provision states thus:

78 (3) “Where a petitioner does not deposit security as required by this section, or if an objection is allowed and not removed, no further proceedings shall be heard on the petition and the respondent may apply to the court for an order to dismiss the petition and for the payment of the respondent’s costs.”

Stressing that the objective of **Section 78** of the **Elections Act** is to prohibit vexatious proceedings and to protect innocent parties from exposure to unnecessary costs, Hon. Justice Majanja, in *Patrick Ngeta Kimanzi vs Marcus Mutua Muluvi & 2 Others HC Election Petition No. 8 of 2013*, he stated:-

“Security of costs ensures that the Respondent is not left without recompense for any costs or

charges payable to him. The duty of the court is therefore to create a level ground for all the parties involved, in this case, the proportionality of the right of the petitioner to access justice vis-à-vis the respondents’ right to have security for any costs that may be owed to him and not to have vexatious proceedings brought against him.”

Costs

Section 84 of the Elections Act and Rule 30 of the Elections (Parliamentary and County Elections) Petitions Rules, 2017 provides that the election Court shall award the costs of and incidental to the Petition and that such costs shall follow the cause. This means that the costs are awarded to the successful litigant. Regulation 36 (1) (a) (b) of the

Elections (Parliamentary and County Elections) Petition Rules 2013 empowers the court to determine the costs payable and who should pay the costs.

Pursuant to the aforementioned statutory provision, Rules, and Regulations, the courts

Election Petitions have left an unforgettable mark on the losers who have been left with expensive fines to pay to the respondents.





use their discretion and wisdom to award costs incidental to a petition. As a principle, costs awarded should be reasonably adequate to compensate for work done but at the same time affordable so as not to unjustly enrich the parties. Neither should they cause an unwarranted dent on the public purse or injure the body politic by undermining the principle of access to justice enshrined in Article 48 of the Constitution.

Costs may be awarded once an Election Petition has been filed and before it is fully heard and determined on merit. For example, the Court in the case of *Martha Wangari Karua & Another vs. Independent Electoral & Boundaries Commission & 3 Others (2017)* eKLR awarded costs at KSHS. 10,000,000/= to the Respondents. This meant that Kshs. 5 million was awarded to the Independent Electoral and Boundaries Commission (IEBC), and Kshs. 5 million went to Hon. Anne Waiguru. This Election Petition was later struck out for non-compliance with the Election Petition Regulations.

Costs may also be slapped upon the Petitioner upon his/her withdrawal of an election Petition

before it is heard to its conclusion. For example, **while granting the Petitioner leave to withdraw Member of Parliament Election Petition No. 9 of 2017 dated 16th August 2017 and filed on 6th September 2017 in the Kisii High Court, between *Ombati Richard v Independent Electoral and Boundaries Commission & 2 others, Hon. Justice W. Okwany* noted that the Respondents were entitled to costs of the petition and ordered the Petitioner to pay the respondents costs.**

In another case, *Justice Janet Mulwa, in Kakamega Election Petition No. 10 of 2017 between Gilphine Mokeita Omwenga vs I.E.B.C & 2 Others*, for the Member of National Assembly, Malava County, capped the 1st & 2nd Respondent's costs at 2 million in a Petition where the Petitioner was granted leave to withdraw his Petition.

In another instance, Justice A Mshila slapped the Petitioner in Kerugoya Senatorial Election Petition No. 4 of 2017; *Hon. Dickson Karaba vs. Hon. Kibiru Charles Reubenson & 2 Others* with costs of Kshs.10 million, while allowing his application to withdraw the Petition. In a surprising turn of events, the Petitioner herein decided to withdraw the election



Petition at the tail end of the hearing when all witnesses had testified.

What is the rationale used to award costs?

The court considers the following in the criteria used to award costs. It includes:-

- a) Receiving and perusing the bulky Petition documents;
- b) Attending court for pre-trial directions;
- c) Conducting the hearing of the matter in the expedited proceedings on a daily basis till completion;
- d) Drawing, filing, and serving responses, affidavits, submissions, and list of authorities;
- e) Effecting various service of pleadings upon the advocates of different parties;
- f) Successfully opposing the Petition that culminated in the Judgment in favour of one's client;
- g) Taking into account the advocate who handled the case, for example, the senior most advocate in the law firm, senior counsel or lead counsel;

h) Working beyond office hours to achieve the purpose by carrying out extensive research on the matter both on facts and law, bearing in mind the consequences that would ensue in the event that adverse orders were to be issued at the conclusion of the matter; and

i) Keeping the client fully informed on the status of the matter, general care, and attention as well as disbursements that cater for transport to court, hotel accommodation, commissioning of affidavits and marking of annexures, printing and photocopying, telephone calls and other expenses.

It is not disputed that an election petition is not a personal discourse. However, it touches on the interests of many who may not necessarily be parties to the dispute. The then *Justice Maraga* in the case of *Joho -vs- Nyange & Another (2008) 3 KLR* held as follows;

“Election Petitions are not ordinary suits. Though they are suits in rem, brought between certain parties, election petitions are nevertheless disputes of great public importance.”

It is, therefore, necessary to balance personal interest over the generality of public interest that election petitions evoke. As stated above, costs in an election petition should not be so onerous such as to hinder access to justice enshrined in Article 48 of the Constitution by an aggrieved party. Costs should also not be punitive unless the trial judge or magistrate sees sufficient reasons to make them so.

In the same breath, costs of an election petition should not be so low as to allow any interfeerer to move the court with all types of vexation pleadings as well as cause discomfort and increased expenditure upon the persons sued.

¹ <http://kenyalaw.org/caselaw/cases/view/143413/>



By Leo Mutisya

Media Monitoring for Hate Speech

The Media Monitoring for Hate Speech and Inflammatory Language project formed part of ELOGs observation strategies for the 2017 elections. This was the first time that it was being deployed since ELOG was formed in 2010. Its purpose was to track and map out Hate Speech and Inflammatory Language through monitoring electronic and print media.

The strategy was based on the (NCIC Act 2008) legislation to regulate hate speech and was informed by the post-election violence of 2007/08. It included an assessment of the spread, degree, and substance of hate speech and inflammatory language in Kenya during the 2017 electoral processes.

Something that “uses, displays, publishes, distributes, shows or plays threatening, abusive or insulting words or behaviour (including written material, programs, visual images, recordings or plays), with the intent “to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up.”¹

Despite social media’s increasing influence on election-related processes with internet penetration being at 38.8% with 17.6million users, traditional media such as print, television, and radio – continues to be the largest source of information for Kenyans. Approximately 83.6% of the population rely on mainstream media for news and information since



“The strategy was based on the (NCIC Act 2008) legislation to regulate hate speech and was informed by the post-election violence of 2007/08.”



they are now covered by the digital broadcasting signal.²

ELOG established a monitoring unit of 21 monitors who observed 14 radio stations including 4 county-based ones which offer their broadcast either in respective local languages or Swahili, 5 mainstream TV stations watched country-wide, and 4 newspapers, 3 of which are widely distributed across the country.



Electronic & Print Media	Media Outlets
Radio	Mbaitu FM, Ghetto Radio, Kameme FM, Inooro FM, Radio Ramogi, Radio Citizen, Radio Jambo, KassFM, Changei FM, Mulembe FM, Radio Rahma, County FM, Radio Lake Victoria, & Radio Ingo
Print	<i>Daily Nation, The Standard, The Star and People Daily</i>
TV	Citizen TV, NTV, K24, KBC and KTN

ELOG ranked hate and inflammatory speech on three levels based on the NCIC Act 2008 definition.

Categories	Definitions
Somewhat Inflammatory	This was the lowest level of hate speech. It had no call for action but it created a negative image of the targeted victim(s).
Inflammatory	This was the medium level of hate speech. It had a dormant call for action. It included the justification of historical cases of violence and discrimination, casting doubt on admitted historical facts and statements, and also statements of criminality of one ethnic group or another.
Dangerously Inflammatory	This was the highest level of hate speech. It was the most extreme and dangerous kind of speech that had the strongest potential to lead to violence. It was characterized by explicit calls for violence and discrimination.

In total, 46 incidents were reported, assessed and analyzed during the six months of monitoring. Out of the 46 incidences, 23 were categorized under

the somewhat inflammatory category, 18 under inflammatory language, while only 5 were considered dangerously inflammatory.

Categories	TV Media	Radio Media	Print Media	Total Count
Somewhat Inflammatory	05	10	08	23
Inflammatory	12	02	04	18
Dangerous	01	03	01	05
Sub Total	18	15	13	46
Grand Total				46

Summary of the Incident Count Monitored in TV, Radio and Print



Notably, some of the reported perpetrators were radio presenters. In one of the incidences, a candidate was ridiculed, insulted, and stereotyped by presenters in a morning program for shifting parties after losing in the party primaries. The reported act also involved playing mocking songs. While in most cases reported the victims were male, there were also cases whereby the victims were communities or supporters of one party or another. The project registered a single case of a female victim who was targeted with crude words that encouraged rape.

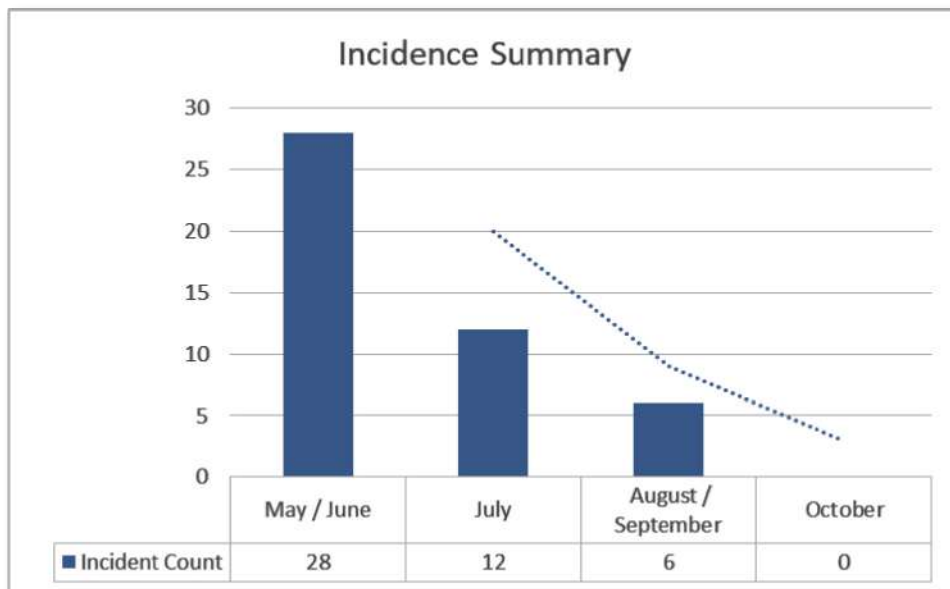
Furthermore, ELOG observed a decline in incidences reported from May to October 2017. In May/June period there were 28 incidents reported,

Most of the incidences reported came from the programs monitored on TV, Radio, and Print media respectively. Radio produced the highest number of reported dangerous incidences. Most of the reported incidences were perpetrated by candidates/aspirants and state officers. Some incidences were reckless utterances by politicians targeting IEBC staff, and ministers who seemed to be campaigning for the ruling party at the time as well as some senior civil servants.

12 incidences were reported in July, 6 incidences were reported in August/September, while October produced 0 incidences. This was attributed to the successful efforts by state and non-state actors in mitigating hate speech, as well as self-censorship by the media outlets.

¹ Section 13 of No. 12 of NCIC Act 2008 retrieved from <http://kenyalaw.org/lex//actview.xql?actid=No.%2012%20of%202008>

² <https://www.cio.co.ke/kenya/ca-report-kenyas-internet-penetration-hits-112/>



Summary of Incidence of Hate Speech Prior to 2017 General Elections



ELOG ACTIVITIES



1 ELOG was privileged to host the delegation from the Zimbabwe Human Rights Commission (ZHRC) who paid us a courtesy call at our offices. Standing with the delegation is ELOG's Chair Regina Opondo (centre), National Coordinator Mulle Musau (far left), and the Senior Programs Manager Marcus Ageng'a (far right).

2 ELOG had the privilege of hosting the former president of Zambia Rupiah Banda, who paid us a courtesy visit. He was briefed on our Election Observation mission for the 2017 Kenya Elections. With him is the ELOG Chair Regina Opondo, Steering Committee member Kennedy Masime, and the National Coordinator Mulle Musau.



3 ELOG in partnership with Code4Kenya Fake News Team

4 ELOG partners, members, and the secretariat during the Report Validation meeting..



4 National Coordinator Mulle Musau's interview with the South African Broadcasting Corporation (SABC) about ELOGs observation missions during the 2017 Kenya Elections.



By Anne Kathurima

SPECIAL INTEREST GROUP

SIG Milestones in the 2017 Kenya Elections

“It’s when ordinary people rise above the expectations and seize the opportunity that milestones truly are reached”- Mike Huckabee



ELOG, in the spirit of advancing the rights of Special Interest Groups (SIGs) as anchored in the Constitution, sought to observe the participation of SIGs during the 2017 Kenya Elections. ELOGs SIG observation was premised on the constitutional provision that advocates for the promotion of the rights of SIGs. Article 100 of the Constitution of Kenya (2010) requires Parliament to implement laws and promote the representation of Women, Persons with disabilities, Youth, Ethnic/ minorities and marginalized communities¹. The

Constitution also advocates for Affirmative Action to ensure that the Youth, Minorities, and Marginalized groups are included in all spheres of life.²

ELOGs Special Interest Groups (SIGs) observation was premised on the constitutional provision that advocates for the promotion of the rights of SIGs.

The Elections Observation Group (ELOG) deployed 93 SIG Observers to a select 83 constituencies in 45 counties to observe the participation of Special Interest Groups (SIGs) with special focus on Women, Youth, and Persons with Disabilities (PWDs). Based on ELOGs SIG reports during the three months of observation (May- July 2017), their participation was marred with



various challenges such as violence during the campaign period. These were recorded in Counties such as Elgeyo Marakwet, Nyeri, Kakamega, Siaya, and Bomet among others. The intent was to ensure their disqualification from the electoral processes.

Various successes were also recorded including the increase in participation of SIGs from 12,776³ aspirants in 2013 to 14,522 aspirants during the 2017 Kenya Elections. SIG candidates were also elected and nominated to the National and County Assemblies. Among them, were three women who were elected as governors in Kitui, Kirinyaga and Bomet counties, as well as three senators elected in Uasin Gishu, Nakuru, and Isiolo counties under the new constitution dispensation. This is unlike 2013 whereby no women were elected to the gubernatorial or senate seat. In addition, 23 Members of Parliament (MPs), as well as 96 Members of the County Assembly (MCAs) elected were also women. However, in 2018, a myriad of petitions have led to the nullification of some of the seats won by women. These include the Member of Parliament seat for Gatundu North, as well as the women representative seat for Turkana. The nullification could prove to be a major setback on the progress made by women in clinching elective seats.

Other setbacks that impacted Special Interest Groups (SIGs) included the failure to nominate Persons with Disabilities, as well as meeting the two-thirds gender rule in 17 of the total county assembly slots allocated, and the cabinet secretaries' slots. This went against the Constitution dispensation to promote the representation of Special Interest Groups (SIGs) in the nominative and elective posts.

Despite these setbacks, the call for affirmative action for Special Interest Groups (SIGs) representation continues progressively in the corridors of courts. The process has led to emotive



debates that are yet to find a conclusive solution.⁴ Such is the case with regards to the implementation of the two-thirds gender principle, which is still pending. However various lobby groups including the Federation of Women Lawyers- Kenya (FIDA-Kenya), have moved to the courts to ensure that Parliament implements the principle.

¹ Article 100, The Constitution of Kenya, 2010

² Article 55, 56, The Constitution of Kenya, 2010

³ IEBC archives, 2013

⁴ <https://www.nation.co.ke/news/Parliament-enact-2-third-gender-law/1056-4217766-jwj7x9/index.html>

LEGAL REVIEW

Shattering the Glass Ceiling

By Lauren Odero and Valdore Obuya

In the late 1800's and mid 60's, Kenya was under the British colonial system. This imperialism had quite a significant impact on the country's culture and still does up to today. Before the ship docked at the Kenyan Coast, women had various roles assigned to them in their communities. These roles included raising children, looking after homesteads, and tilling the farms among others. During this era, women were also married off at an early age. Potential suitors would pay hefty dowries to the girl's guardians.

In the post-colonial era, a different dynamic was introduced. The political scenery in Kenya since Independence saw patriarchal underpinnings taking shape and metamorphosing over the years. Kenya was ruled as a unitary party state from 1965 until 1991 when the constitution was amended to re-introduce multiparty politics. Since the promulgation of the Constitution of Kenya (CoK) 2010, advances have

been made to ensure the participation of women in the political landscape. However, women's prospects in political leadership have continuously been mired with challenges even with the inclusion of the two-thirds gender rule in the Constitution.¹

In the 2013 Kenya elections, women aspirants faced various challenges in accessing elective and nominative seats compared to their male counterparts. All gubernatorial seats were won and held by the men. During the 2017 Elections, the 2/3rd gender rule threshold was not met again as stipulated in Article 81 of the Constitution of Kenya². However, six women made history as the first women to win their elective seats as senators and governors since the promulgation of the Constitution of Kenya (CoK) 2010. Charity Ngilu, the first woman who competed in the 1997 presidential elections and nonetheless lost, continued to make advancements in the political scenery when she became one of the three women who won the 2017 gubernatorial seats.

Currently, Kenya has women in the following seats which include, 3 governors, 3 senators, 22 Members of Parliament, 23 women representatives, and almost 100 Members of the County Assembly (MCA). This was a significant improvement compared to 2013 whereby no women were elected as governors or senators, 84 women were MCAs, and 16 women were in the 11th Parliament.³

Implementation of legislation that will ensure adequate representation of women in parliament as per Article 100 of the Constitution continues to be a challenge. With parliament taking a casual stance in the implementation





process and civil society pushing for its realization, the battle to ensure the implementation of the two-thirds gender rule continues to be fought in courts' corridors. Advocacy efforts are being undertaken by the civil society, and development partners geared towards shattering the glass ceiling to ensure the gains of the two-thirds gender rule.⁴

Women's engagement and their contribution to Kenyan democracy is vital. The question thus arises, on how the country can better ensure the participation of women in not only the political sphere but in every other sphere of life. Although legal implementation is most crucial and the Supreme Court of Kenya advised that the implementation of this principle is progressive⁵, it is important for the civil society to look beyond this and consider other avenues available to it in pushing for the inclusion of women.

As much as Kenyans have heard of this principle and know of its implications, in the privacy of their homes and in private discussions few people believe in the spirit of this rule. The reality is that the 2/3 gender principle calls for the inclusivity of not only women but men as well. It also goes without saying that even where provisions are made, few women

will boldly step out into the political arena and fight it out.

“ The question thus arises, on how the country can better ensure the participation of women in not only the political sphere but in every other sphere of life. ”

Progressive adoption of the two-thirds gender rule does not mean that it should be retrogressive or staggered. Kenya's promulgation of the 2010 Constitution represents the voice of the people, and it is high time Parliament got on board. The two-third gender rule is meant to correct social and historical injustices, and thus it serves to benefit both sides of the divide.

Deliberate efforts should be made to ensure their engagement throughout the electoral cycle, so that their representation may be affirmed in the process especially towards their participation in the 2022 Kenya Elections and beyond.⁶

¹ Article 27(8), Constitution of Kenya (CoK 2010)
² IEBC website
³ <http://www.ke.undp.org/content/kenya/en/home/blog/2017/9/14/Kenyan-women-emerge-in-political-leadership-and-governance.html>
⁴ <http://www.ke.undp.org/content/kenya/en/home/blog/2017/9/14/Kenyan-women-emerge-in-political-leadership-and-governance.html>
⁵ Advisory Opinion No. 2 of 2012 available on <http://kenyalaw.org/caselaw/cases/view/85286>
⁶ <http://www.ke.undp.org/content/kenya/en/home/blog/2017/9/14/Kenyan-women-emerge-in-political-leadership-and-governance.html>



One Too Many a Voice (Old Kriegler an' his Crew)

By Adipo Sidang'

Long queues veined our cities, towns an' villages:
Like blood vessels that feed nations for ages
Our bold feet unfettered in the long wait
On the chilly morning of August 8.
As the flag rose to the anthem
'We' rose up against 'Them'.
*Old Kriegler an' his crew,
once came said to you:
that every election year,
our voices speak in fear
of bullets in ballot boxes,
of ghosts in our voices,
'17 was year of choice
but we broke dawn with one too many a voice!*
September came an' October rolled with a turn:
The servers tight-lipped on who really won
Still somebody 'won' an' somebody 'lost'
In remembrance of August ghost,
Carrying our votes like a totem
'We' rose up to end the game.
*Old Kriegler an' his crew,
once came said to you:
that every election year,
our voices speak in fear
of bullets in ballot boxes,
of ghosts in our voices,
'17 was year of choice
but we broke dawn with one too many a voice!*
And everybody couldn't agree election was done:
Vociferous voices in loud whispers of a gun
Midnight lullabies to a country roaring
Like hungry tides folding up fleeing
What's an ocean without tides?
A country without strides?
*Old Kriegler an' his crew,
once came said to you:
that every election year,
our voices speak in fear
of bullets in ballot boxes,
of ghosts in our voices,
'17 was year of choice
but we broke dawn with one too many a voice!*

Sidang' is a poet, novelist, playwright and author of "Parliament of Owls" collection of poems (Contact Zones Publishers, 2016), and "A Boy Named Koko" (2017 Burt Awards for African Writers winning novel) Email: info@adipoetry.com



By Samuel Waweru

Sample-Based Observation



observers and 215 General observation supervisors. This made for a total of 2, 196 observers.

Summary Findings

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

Observation Analysis

Our observers in sampled polling stations observed the opening and setup of the polling stations. This statement is based on

Observation, and Incident Reports filed as of 26th October 11:30 am by ELOG observers.

ELOG deployed observers to give sample-based observations during the 26th October 2017 fresh presidential elections, which spoke to the quality of the electoral day processes only. The ELOG observation mission was premised on three objectives that were largely informed by the Supreme Court ruling that annulled the initial election and directed a new one to be held in within 60 days.

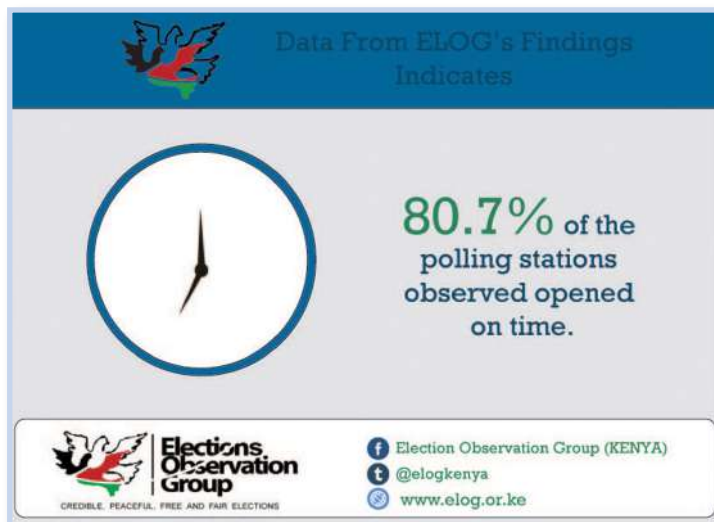
The mission objectives were to assess;

- o Whether the fresh presidential election was conducted in compliance with the Constitution and the relevant electoral laws.
- o Whether the IEBC was competent in managing and conducting the fresh presidential election.
- o Whether there was transparency and inclusivity in the conduct of the election.

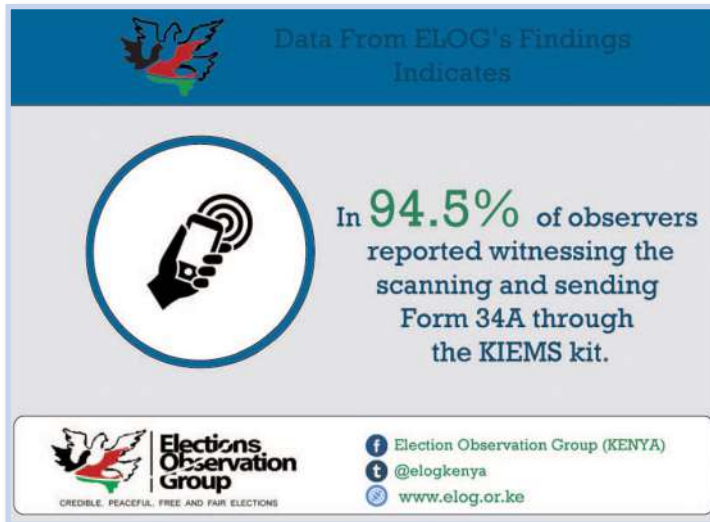
In this regard, therefore, ELOG deployed 766 Sample-based observers, 517 General Observers, 408 Tallying Centre observers, 290 Long-Term

Opening and Set-up

- 80.7% of the polling stations observed opened on time. The remaining stations opened between 7:00 am and 8: 00 am, with



Results Transmission



Voting Process

- some opening after 8:00 am.
- In 99.9 % of polling stations observed, the ballot boxes were shown to be empty before being sealed.

Voting Process

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

Counting Process

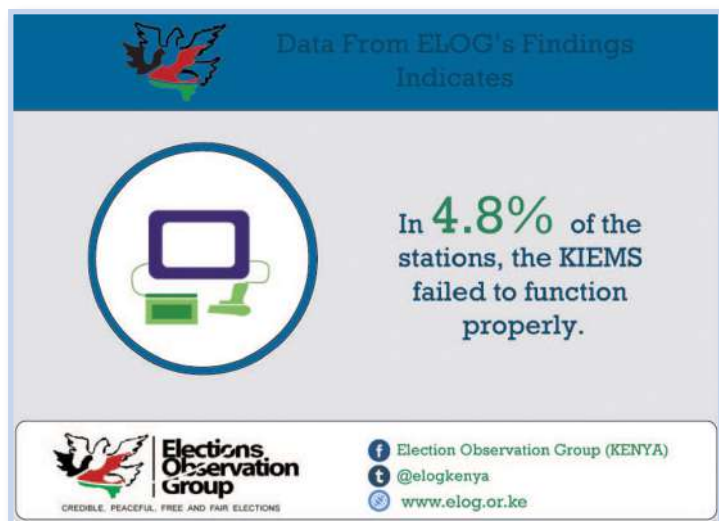
We have also concluded our analysis on the counting process. The following are some of ELOG's findings on the closing and counting.

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

Constituency Tally Centre Observation Findings

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

- In 2.9% constituency tallying centres observed, the tallying process was postponed, disrupted or halted at some point.
- In 2.7% of constituency tallying centres observed, there was an attempt to harass or intimidate election officials during the tallying process.



Results Transmission



- In 88.2% of constituency tallying centres observed, observers witnessed the input of Presidential results Form 34A results into the computer spreadsheet by the Returning officers.
- In 99.5% of constituency tallying centres observed, no party agents filed a written complaint regarding the constituency tallying process.

Closing Process at the Constituency Tallying Centre

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

Results Transmission

Of the polling stations observed by ELOG, 94.5% of observers reported witnessing the Presiding Officers scanning and sending the Presidential Results Form 34A through the KIEMS kit and receiving a confirmation message. As mentioned above, the majority of constituency tallying centre observers – 95.7% - also witnessed the electronic transmission of the collated results Form 34B. While the transmission of the 34As was fast the absence of rolling aggregate provisional results at various electoral jurisdictions and lack of transparency in the process was questioned.

Comparison to 34As on the IEBC's Website

In addition to observing the quality of the process



at polling stations, ELOG observers requested copies of the Presidential Results Form (34A). ELOG observers collected 540 images of forms 34A in order to compare them to those posted on the IEBC's Forms site (<https://forms.iebc.or.ke>). The following observations were made:¹

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

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

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

Voter Turnout

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

¹ <http://www.elog.or.ke/index.php/resource-centre/item/download/>



By Caroline N. Wathigi

AN OBSERVER'S OUTLOOK

Beyond the Elections-Our Civic Duty to Participate!



During the 2017 Kenya Elections, the citizens exercised their constitutionally provided democratic right of casting their vote as stipulated in the Constitution of Kenya (CoK) 2010.¹ The year was also marked with memorable happenings in the electoral arena. Notable amongst them was the increased campaign periods, the nullification of the 8 August elections, amendments to the electoral laws, the fresh presidential elections held on 26th October, and an overall public resilience while participating in the long electioneering season.

The 2018 post-electoral cycle continued to have its fair share of political incidences. Among them was

the resignation of the Deputy Governor of Nairobi which raised questions of continuity and succession, and the “swearing in” of NASA coalition’s leader as The People’s President on 30th January.

The repercussions of this inauguration had a domino effect whereby local media houses were shut-down for covering the event, the National Resistance Movement-Kenya (NRM-K) front-liner was deported, and the passports for the movement’s affiliates were revoked. Additionally, political blows have been felt with the nullification of elections for various positions including those belonging to Members of Parliament and Governors, thus affecting several constituencies such as Embakasi

“ In the event they disapprove, they have the right to demand that the elected members fulfill their duties as they should. ”



East, Gatundu North, Turkana, Embu, and Homabay among others. This may lead to the exigency to hold by-elections.

In all the melee, Kenyan citizens seem to have moved on just as quickly to other non-political activities. However, it is important for Kenyans to observe and monitor the events, and conduct of the leaders they have entrusted to hold public offices as outlined in the constitution.² It is the civic duty of every citizen to participate in the governance of our counties and country at large. All Kenyans are encouraged to know the manifestos, roles, and responsibilities of the different persons elected, and keenly observe whether they are performing their duties as required. In the event they disapprove, they have the right to demand that the elected members fulfill their duties as they should.

Some strategies that can be employed to enhance our national values and principles in good governance are:

- Use of Score Cards;
- Use of Media both Mainstream and Social Media;
- Attending Public Meetings and Foras;
- Peaceful and unarmed assemble, demonstrate, picket, and present petitions to public authorities (Art 37);



- Organizing meetings with authorities through organizations such as faith-based, community-based, or non-governmental;
- Recall of non-performing Members of Parliament either at the national or county levels.

In keeping with the words of our National Anthem 2nd and 3rd stanzas, “

“Amkeni ndugu zetu
 Tufanye sote bidii
 Nasi tujitoe kwa nguvu
 Nchi yetu ya Kenya
 Tunayoipenda
 Tuwe tayari kuilinda
 Natujenge taifa letu
 Ee, ndio wajibu wetu
 Kenya istahili heshima
 Tuungane mikono
 Pamoja kazini
 Kila siku tuwe na shukrani”

May we all arise and actively participate in the running of our country’s affairs with full knowledge that the success, growth, and pride of Kenya depends on us!

Let us all participate. It is our civic duty!

¹ Article 38 (3b), Constitution of Kenya (CoK) 2010

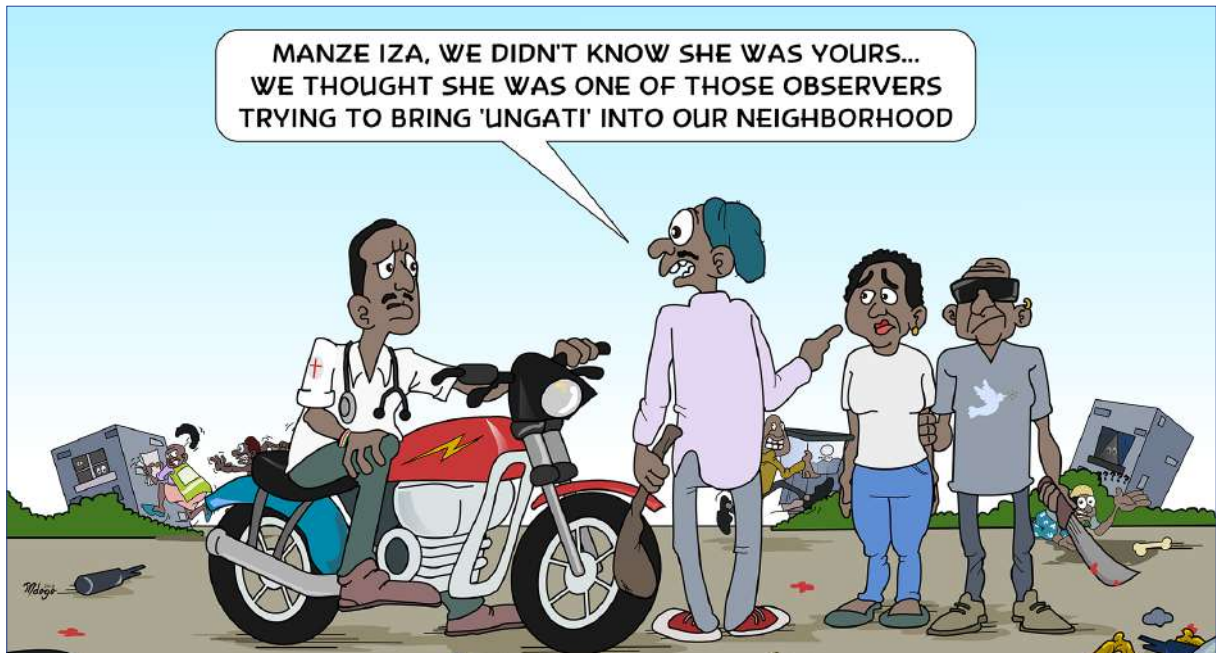
² Article 10, Constitution of Kenya (CoK) 2010



CREATIVE STORIES

I SEE FIRE

By Azorius Karanja



The morning was unlike any I had seen in a long time. The way life works, at least with mine, is that the periods following an awesome experience tend to be underwhelming. It is almost as if the awesome experience brings about some sort of sensory overload, and after that everything else that follows seems dull and lifeless. This morning was clearly a departure from the norm.

I was already up and about by the time the sun began tracing the neighbourhood on the ground in pale shadow, in fact, I had been up for quite some time. Jonte had thrown a party for my sister Maria the previous night. As with any celebration in times of peril, we partied like there was no tomorrow. Actually, we were not sure what the following days and weeks would hold. Usually, uncertainty and an African election go together like gin and tonic. Suffice to say, the partying was hard, the drinks went down easy, and the crowd was truly mad. The fact that I

was up again by the wee hours of the morning was because we left the party early; a time which was not up to Jonte and Maria's standards, much to their disappointment.

I feel the phone's vibration before I hear the alarm ring. I rouse myself rather lethargically but purposefully and push the duvet aside before silencing the alarm which is now bawling an irritating tone. I'm not taking chances this morning because I'm reporting to work very early today, so party or not I have to be on time.

For many people, life stops with an election, but the nature of my job allows me to see past this... Election or not, people need to eat, travel, and the demand for essential services like medicine and security is also very high. It is cold, nothing unusual for me but today I am extra grateful to my former neighbour who suggested that heavy gauge PVC would be good for insulating my hovel against



the elements. The piercing cold that rides on the early morning winds still finds little gaps to exploit, but that is taken care of by the heat from the *meko* as I put some water to boil. I should have a cup of *sturungi* momentarily with which to chase down the two KDF left over from yesterday.

The single room I live in is not very big, but it is roomy enough to hold my bed, two sofas, a coffee table, and a small cooking area. Electricity is from non-official sources (*ya mradi*) and never goes off, a blackout is simply sorted by switching to another transmission line. These chaps are geniuses! For some reason, yesterday night there was no power, but as I am sitting down to eat, the light on the extension cord comes on. Just then, messages hit my phone from work advising a change in the deployment schedule. I need not go to work today. The other message is from Pauline; she has gotten a colleague to stand in for her at the restaurant, and she will be here before 7 am. Like I said, Good morning.

Jonte's bash was one of the best I have been to this year. The meat was plentiful, and the drinks were flowing!!! Man, I tell you, that guy can throw a bash. We made merry till the wee hours of the morning. No one wanted to go home. With the following day being a free public holiday, there was no reason to leave. It was a little odd being invited to a party on the night before an election, given the tense environment. However, when Jonte sent the invites, he described it as a small gathering of friends on the occasion of his wife's birthday. It was not meant to be anything big. He had been my classmate since primary school, so there was no way I was going to miss it. *Wazee hukumbuka*.

The thing about Jonte is that he tends to understate things, probably a product of his being down to earth. This makes things rather interesting because you never know what he is getting you into until it hits you like a runaway train. I had forgotten this as I was confirming my attendance, but it quickly came back to me when I got to his place just before dusk. I was welcomed by loud bongo music at the entrance to their estate, and I followed it into their

backyard where all the action was. The spectacle that greeted my eyes was nothing short of bedlam. Hedonism at its highest. Just as I arrived, the strains of "*Kanungo e teko*" rent the air. The madness that broke out in that compound even Mathare could not contain; people danced as if some mysterious current had charged them and it was as though I had been engulfed by a *haboob* (desert wind) because of all the dust the dancers had raised in the semi-darkness.

As I made my way through the frenzied throng towards the kitchen door, someone caught my attention. Light like coffee with cream, this wisp of a lady was dancing in the most enthralling manner I had seen in a long time. She was a like a beacon in the fog around me. Just before I switched direction, I felt a hand grab my shoulder from behind and behold; there was Edu. It had been quite a while, and I was happy to see him, but he was distracting me from my quarry. This dancing queen had taken me back to those days when I had the choicest of pickings as the premier disco *matanga* emcee in our area. If disco *matanga* were a mass, I would have been the high priest.

"*Mzito itakuaje*," goes Edu as he drags me out of the crowd. "*Poa sana daktari*," I tell him as I try to wriggle my way out of his grip which has since shifted to my arm and is pulling me from the latest attraction. I try to resist his efforts, and he laughs at me as he half drags/pulls me into the kitchen. He tells me that I will have the time to explore the social scene later. "For that one, you will have to go through Jonte though; she is his niece," he adds.

Edward or *daktari* as he goes by is a nurse cum paramedic with one of the emergency medical services in the city. My friend since I could walk; he was my accomplice in almost every childhood misadventure I engineered with my curious ways. I chide him a lot because of the humble lifestyle he lives. He still resides where we grew up, in a *kijiji* on the other side of town. He could be wealthy if he wanted, and I have a few businesses we could do together. Patients are not the only thing he can transport, but he treats that ambulance of his like holy ground. He

“The single room I live in is not very big, but it is roomy enough to hold my bed, two sofas, a coffee table, and a small cooking area.”

takes me to what he calls the adults' table where Jonte is seated with Maria, family, friends, and some local heavyweights. The evening passes fast as we feast, reminisce, dance, and make merry but I still have some unfinished business.

As the evening gives way to night, the merry-making goes into overdrive, in stark contrast to the prevailing mood in the area. Everyone has their phones close in as much as we are having fun, and every once in a while people leave to make calls in the privacy and quiet of their cars. My turn comes around 10 pm when one of my assistants flashes me. Not much is said, he simply reports that the boys will be out early tomorrow and that they need "*pesa ya breakfast*." I quickly make a withdrawal via mobile money at one of my agencies in the *kijiji* and direct the lad there. Everything else they need they will pick from there as well. The thing about being an effective mobiliser is that you will be sought out by all sorts of people for all kinds of things. I switch off this particular line after this call. I have done my bit. It is up to the boys to do as is fit tomorrow.

The sun is now painting the horizon red and gold, and shafts of light are making their way through the small holes in the insulation. I am reclining on the sofa when *mrembo* calls me. She sounds panicked, and her voice is unsteady. She does not frighten easily so something must be very wrong. She wants me to pick her from the stage. The safest path into my side of the *kijiji* has been barricaded, and she's had to turn back. I don my uniform so that I am recognizable as a paramedic and get on the *boda-boda* I had borrowed from my neighbour. J

Just as I leave the house, I see a group of young men, all of whom I know, making haste in the direction of the stage and I open the throttle on the motorbike; this might be one of those times when life and death lie seconds apart. I flank the young men using a parallel path and bypass the barricaded area by riding across a rickety wooden bridge that takes me across the river to the fringes of the *kijiji*, and I arrive at the stage in record time. It takes me all of 4 minutes to get to the stage, but there is no sign of Pauline. My heart leaps into my throat as I see the barricade she was talking about. It is 'bout 200m to my left on the main road into the neighbourhood, parallel to the path I had taken out of the *kijiji*. Then... I see her.

She is being led towards the barricade by a small group of young men armed with crude weapons. I rev the small bike towards them while shouting her name. It is a ride into death, "*Kama ni kwenda tunaenda wote*" I decide. My shouting draws their attention and also seems to invigorate her struggle, as she begins shouting my name and telling the young men to leave her alone.

I know most of them, I have treated most of them for one problem or the other, spoken in their schools, and given some of them small hand-outs. *Za macho* they call them. "*Ati sasa umekuwa otero! Unajiona hero sio?*" one of them asks me as he stares at me through somewhat glazed eyes. As he starts towards me menacingly, two others quickly restrain him. "*Kwani hujui daktari? Huyu ni wako, daktari?*" I am asked by another one as he motions to Pauline. I answer in the affirmative and she is released to me rather reluctantly. "*Leo msitoke. Tuko job.*" I hold Pauline long and hard before I help her up the *boda boda* and then one of the lads approaches me. "*Manze Edu iza, we are sorry. We did not know she is yours. We thought she was one of those observers. We caught one today. The nerve on her, trying to bring *ungati* into the *kijiji* with those forms of hers, coming to spy on us. We taught her a lesson she will never forget.*"

The lads insist that I cannot turn back and that I must instead go through the barricade. Getting my girl back from them was already a major concession on their end. I am not willing to test them more, especially now that they seem to be in some sort of narcotic haze. The one I am talking to hitches a ride on the *boda boda* and urges me on, getting us through the barricade, past the menacing gazes of his compatriots, past their overt nonchalance about ending life, and past the evil that has taken over this land. I breathe a sigh of relief as we ride past them, but it is soon cut short by the sight that greets my eyes a few meters on. Sprawled lifeless by the side of the road is a familiar figure. My heart truly stops. Never in the life of me would I have seen this coming. Yesterday she was full of life, dancing her way into everyone's heart. And to think how Mike was drooling over her yesterday.....Jonte's niece! Now here she is... I have no idea what to say or do. The rest of the ride home is a blur. So much for that good morning. I get home and call Maria. I see fire.



By Musembi Mutisya - Research, Innovation & Technology, ELOG

ADVOCATING FOR OPEN ELECTION DATA

Use of Social Media and Technology in Electoral Processes

Kenyan media has experienced drastic changes in the past two decades ever since the onset of multi-partyism in 1992. From the era of state-controlled media to the liberalization of print and electronic media, and thereafter the new digital media, communication avenues have indeed grown. One notable aspect about the 2017 elections is the role played by various unsolicited sources such as emails, SMS, blogs, newsletter, flyers, as well as mainstream sources such as newspapers, televisions, and radio sources.¹

Undoubtedly, the most significant impact of technology is the spread of information. In the past,

data was retrieved from a databank or an expert. Today, most of the information in the public sphere is available at our fingertips. Previously, elections were driven by the strength of a candidate's physical campaign. Nowadays, the political sphere has transformed through social media because of its publicity features and easy access of information. The startling growth in social media has given Kenyans a platform for political activism².

With the 2017 General Election, the political activity on social networks was intense. Politicians engaged their supporters actively on various electoral issues through social media platforms such





as WhatsApp, Twitter, and Facebook among others.³ This is unlike previous years when most engagements were carried out on the ground.⁴ Broadly, the political campaign communication has transformed exponentially. A piece of news can spread online due to its surprising and shocking nature rather than truth and accuracy. Some social sites maximize their engagements with users through algorithms which prompt them to comment, like or share posts. This keeps the users glued to the site for as long as possible.

Interestingly, the internet activity during the 2017 electoral period informed present-day electoral processes, voting behavior, and political preferences. It also displayed features such as campaign materials, photographs of political events, and polling stations among others. This emphasized the changing political and electoral environment through the use of technology.

Technology requires human intervention in order to operate efficiently in the spread of data and information. Previously, it was easier to control and shape the political debate when the society relied on traditional media. However, the 2017 Kenya Elections proved that absolute control over information was a slippery affair that led to the Fake News phenomena. Most of the information published or broadcast on mainstream media acquired a new life whereby,

Social Media users quickly transformed and shared mass messages to group platforms. Thereafter, the groups' members analyzed, redesigned, and recast the same information with completely different meanings to suit their wiles. Meme⁵ frontiers continued to have their field days parodying amusing statements and events. This has continued even during the post-electoral period.

Social media platforms have turned into avenues that one must be wary of in the electoral cycle, even in the subsequent years to come. This is due to the unrestrictive, and spontaneous world it gives its users. In as much as the spread of electoral data and information has toned-down after the fresh presidential elections, the heat and hilarity of messages shared continue to generate political discourse, where sense recedes and emotions reign.

"This is a social media driven elections, where people want easy to consume content that doesn't make us think a lot" – Anonymous

“ Some social sites maximize their engagements with users through algorithms which prompt them to comment, like or share posts. ”

¹ https://www.researchgate.net/publication/322630320_The_Impact_of_Social_Media_and_Digital_Technology_on_Electoral_Violence_in_Kenya

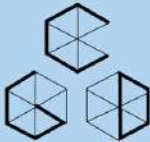
² <https://www.standardmedia.co.ke/article/2001233664/how-social-media-will-define-elections>

³ ibid

⁴ http://eprints.bournemouth.ac.uk/20307/4/Lilleker-Vedel_2013.docx.pdf

⁵ <https://en.wikipedia.org/wiki/Meme>

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Darubini Ya Uchaguzi is a publication of



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