



EACSOFOF Kenya Chapter 2017 General Elections Update

Introduction

Kenya held its five year cycle General Elections on 8th August 2017 to cast votes for 6 offices: Executive President, 46 County Governors, 290 Members of the National Assembly (MPs), 47 Senators, 47 Woman Representatives and 1,450 Members of County Assembly (MCAs). There were a total of 8 presidential Candidates but the main contest was between the incumbent Uhuru Kenyatta of Jubilee Party and Raila Odinga of The NASA Opposition Coalition.

Immediate Pre-election period witnessed a raft of legal challenges (by opposition, civil society and concerned individuals) in court to the electoral laws, voting and vote tallying procedures in particular with regard to the presidential vote, roles/responsibilities of different Independent Electoral and Boundaries Commission (IEBC) officials and procurement of a printer for the ballot papers. Party nominations of candidates (for the seats above) was chaotic across party lines which resulted in tens of tribunal and court challenges as well as a record number (4,950) of Independent Candidates – who claimed to be casualties of party nominations rigging plots. Throughout the campaigns the opposition consistently challenged IEBC on its preparedness and regarding allegations of favoring the incumbent while the later appeared to defend the IEBC. The campaigns were heated but mostly peaceful with the leading presidential candidates visibly on daily vote hunting excursions that drew large crowds even in areas perceived to be not supportive of their candidature. Earlier opinion polls had given the incumbent Uhuru Kenyatta a clear lead but as elections drew closer the gap had narrowed significantly with most polls still showing a narrow lead by Uhuru but almost all pollsters agreeing that the election was too close to call.

Voting, managed by the IEBC was mostly peaceful with very few reported hitches with the voter verification technology, late opening of polling centers, missing names from specific polling stations and incidents of incompetence by IEBC officials.

Provisional Tallying of presidential results was streamed over a three day period showing the incumbent consistently in the lead – a trend that was challenged by the opposition as an early sign of rigging since there was no verification of votes cast at polling centers where the results were generated or verification of the relevant documents. Opposition also wanted possible hacking of the IEBC server investigated among other issues. IEBC dismissed opposition concerns.

Official Provisional Results announced by the IEBC on 11.08.2017 confirmed re-election of Uhuru Kenyatta with **8,203,290** against Raila Odinga's **6,819,036**. President For the gubernatorial seats Jubilee and its affiliates got 27, while NASA got 18, and Independents 02. In the National Assembly, Jubilee and its affiliates got 165 seats compared to NASA's 121 seats. Other parties got 29 seats while 13 seats were taken by independent candidates. For the Senate Jubilee and its affiliates got 27 and NASA's 20 seats. Finally Jubilee and its affiliates got 30 women representatives while NASA got 16 and 1 was an

independent candidate. Other highlights include the election for the first time of, 3 Women governors and 3 Women Senators.

Unravelling of IEBC declaration of results has been varied: the opposition did not concede defeat and even issued parallel results from its own tallying of votes that show Raila Odinga won. Celebrations have been witnessed in Jubilee strongholds and demonstrations against the outcome in a few opposition strongholds. The later were thwarted violently by police with a number of deaths reported including of children hit by “stray” bullets in their homes. Public outcry against police excessive use of force and calls to respect rights of protesters have been made by among others election observers, CSOs, religious leaders, UN mission and diplomatic missions in Kenya. There have also been calls on the opposition to concede defeat or take the matter to the Supreme Court for resolution for resolution as stipulated in the constitution. The opposition initially expressed reluctance to concede or take the matter to court citing past bad experience (2013) in the Supreme Court but has since elected to file a petition at the Supreme Court. The constitution gives the Supreme Court two weeks to hear and determine it.

Current situation is generally calm, business is picking up in key centers and workers are resuming as transport normalizes. The president elect has promised to respect the right to peaceful demonstration if the law is followed. In other worrying developments the NGO Coordination Board Executive Director has announced deregistration of two NGOs – an EACSO member, Kenya Human Rights Commission (KHRC) and AFRICOG- a move that elicited a barrage of condemnation from many quarters including the UN Mission, the Kenya National Human Rights Commission (KNHRC-independent constitutional commission) and EACSO Kenya chapter members. The Cabinet Secretary in charge of NGO Coordination Board has meanwhile receded the deregistration and set up a committee to review the case. AFRICOG has obtained a High Court order barring the NGO board and Kenya Revenue Authority from interfering with it.

EACSO Kenya Chapter participated in the elections largely through monitoring of the process by its members among them, Kenya Human Rights Commission (KHRC), Independent Medico Legal Unit (IMLU), Transparency International (TI), Freedom House, Legal Resources Foundation (LRF) and Collaborative Centre for Gender and Development (CCGD). Below is a summary of election observation reports including by EACSO members.

Brief on Election Observation in Kenya

The election observation in Kenya was conducted by a mix of stakeholders. These included CSOs, national and international media, regional and international governmental institutions. Specifically, the inter-governmental institutions included the EAC Election Observation Mission, AU Election Observation Missions, and EU Election Observation Mission. Key international CSOs and non-state actors’ observers included International Republican Institute (IRI), National Democratic Institute (NDI), Election Observation Group, and Carter Centre. Most observer teams focused on the polling with a few laying emphasis on pre-polling and tallying processes. While the general observation reveal that the polling was free and fair, some of the observer teams highlighted some key weaknesses in the electoral process.

Summary of key findings from Observation teams

The International Republican Institute reported that the level of competitiveness of the presidential race, the nature of campaign rhetoric and the degree of confidence citizens have in the electoral process served as key indicators of the likelihood of electoral violence. They observed that it was unclear whether the

government and the IEBC are prepared for a run-off, or for a transition of power in the event *NASA* wins. In addition, IRI indicated that the Supreme Court did not appear to have the capacity to properly adjudicate disputes if one of the candidates were to reject the results. Given the heightened political tensions between *Jubilee Party* and *NASA* supporters and the increased competition at the county level, post-election protests were likely, and there was a chance that violence may break out if the veracity of the results is called into question.¹

KHRC, a member of EACSO Kenya, reported that after an orderly voting process, Kenya's 2017 elections degenerated into now familiar problem - tallying. The tallying of completely unverifiable results led to serious political instability.² Election Observation Group (ELOG) reports indicated that voter education was not comprehensively undertaken in all the constituencies in the country. According to ELOG, voting process generally went on smoothly across the country with isolated incidences of irregularities reported. ELOG also produced and published parallel results of the presidential Elections corroborating the IEBC's results.³

Independent Medico Legal Unit (IMLU), another member of EACSO Kenya, showed that the Police generally conducted themselves professionally except in a few cases such as in Migori, Kisumu and Nairobi and Endebes in Trans Nzoia where chaos erupted and police tortured and injured civilians. IMLU further recommended that there's need for the police to constantly communicate to stakeholders to avoid uncertainty and suspicions.⁴

On the other hand, EAC EOM generally indicated that the IEBC conducted professional, free and fair elections. The report commends the security agencies for ensuring overall law and order during the election period. However, the report makes further recommendations to the IEBC including and not limited to ensuring that all preparations leading to polling should be done in good time.⁵

AUEOM reported that the Elections were peaceful. On Election Day, August 8, the population went to the polling stations in large numbers. The process up to and including the counting of the votes at the polling stations and their transmission to the IEBC, met the standards set by Kenya and the AU for the conduct of democratic elections.⁶ The EU also reported free and fair polling process but also added that little time for preparation limited IEBC's readiness. The IEBC officials were challenged in communication and the finalization of polling procedure which led to a lot of mistrust in the technology used.⁷ The Carter Center observed that the polling process was credible, free and fair but added that candidates and parties ought to use established legal channels to resolve disputes and to ensure that their supporters remain calm throughout the remaining electoral period. The NDI on its report revealed that Participation of women candidates was still low and will not meet the two thirds gender rule.⁸

¹ International Republican Institute (2017)

² Kenya Human Rights Commission Election Observation Report (2017)

³ Elections Observation Group (ELOG) Election Observation Report (2017)

⁴ Independent Medico Legal Unit (IMLU) Election Observation Press Release (2017)

⁵ EAC Election Observation Mission in Kenya (2017)

⁶ African Union Election Observer Mission to The 2017 General Elections in Kenya

⁷ European Union Election Observation Mission in Kenya (2017)

⁸ 2. National Democratic Institute (NDI)

Update on the election petition in the Supreme Court

On 1st September 2017, the Supreme Court of Kenya nullified the August 2017 Presidential election results. This was a historic ruling as Kenya is the first country in Africa to nullify these results and third world wide. At least seven African countries have in the past seen presidential election petitions being filed but all of them were unsuccessful. While the judgement is yet to be read, the judges stated that they found that Independent Electoral and Boundaries Commission (IEBC) breached the Constitution in the transmission of the election results and therefore ruled that the results invalid.

The ruling was received with cheer and pomp by NASA and its supporters. Jubilee party led by the President went ahead to denounce the Supreme Court's verdict stating that it was against the will of the people. However, Jubilee Party agreed to participate in the fresh elections as directed by the Supreme Court. Scholars and citizens in support of the ruling reckon that it is a win for democracy. It also highlighted the independence of the judiciary as an arm of government.

As we await judgement, the court called for fresh presidential elections within 60 days as stated in the constitution. On 5th September, IEBC gazetted 17th October 2017 as the new date for the presidential elections. The chairman who also serves as the national returning officer also gazette a list of Project staff contracted for 3 months to work on the elections. This decision was criticized by many especially since the verdict cast doubt on the commission's ability to perform its duties. The NASA coalition out rightly stated that they were ready for the elections only if a different body, other than IEBC, oversaw the process or if the implicated IEBC staff as removed from office. Jubilee on the hand has stated that they are ready for the elections but has rejected the project team as gazette by the IEBC Chairperson.

After the ruling, various candidates who lost in the August elections have started filing their petitions. These include Martha Karua, Wavinya Ndeti, Peter Munya, Steve Mbogo with many more in progress.

On 17th October 2017, only two candidates and their running mates will be on the ballot, that is Uhuru Kenyatta and Raila Odinga. This move has been criticized and termed to go against the court's ruling which was that a fresh election be conducted in 60 days. Fresh elections would mean having all the presidential candidates on the ballot. Ekuru Aukot has mentioned that he will be challenging IEBC's gazette in court.

Campaigns are already underway. NASA trail went to Kisii which was one of the contested areas in the petition. Jubilee on the other hand toured Narok and Kajiado. The campaigns started off with defections. Peter Munya (who defended his gubernatorial seat in Meru County) moved to NASA which has been viewed as both a good and bad move in equal measures. Official Campaigns will end on 15th October in preparation for the election.

EACSOFF Kenya continues to monitor the situation and shall keep giving updates as the need arises.