Wait!!



It's too Early to Write off International Election Observation.

A TDGHRconsult Series by

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Should we rule out election observations?

Kenya's landmark Supreme Court ruling of September 1, 2017, that set aside the result of the presidential election held on the 8th of August 2017 has triggered numerous commentaries with a significant number of these questioning the importance of the role of international observers in elections. From a cursory view of media reports it appears many of the anti-observer commentaries are based on a general misconception that international observers gave the Kenyan election an unquestioned thumb-up. Their reasoning seems to stem solely from the court ruling which on face value paints a picture that appears at odds with the observations of the international observer missions. This is problematic in that such contentions may have ignored the context in which observer missions arrive at their conclusions. They assume international observers were too quick to endorse the election and thereby legitimised a flawed election.

Such assertions present half-truths and quite contrary to the fact when you take a closer look at all the facts and factors at play. If anything, the Kenyan election buttresses the importance of international election observation and at the same time provides an apt case study and opportunity to review and revise international election observation methodologies. There are several take always from this election in relation to international election observation that need to be unpacked and understood. Firstly, international election observation, though past infancy, is still in its developmental stages despite being in existence for decades. The concept's methodologies and processes continue to evolve informed by different election observation missions.

Secondly, in most cases, observer missions are usually deployed in post conflict countries or in emerging democracies in their first election experiences. The idea being that the deployment of international election observers will instil a sense of confidence in the electoral process and will "deter" election maleficence. Thirdly, observer missions have also been deployed in countries with "developed" democracies as part of experience sharing exercise as well as providing a learning platform for election practitioners from countries that are still developing electoral processes. The latter dispels the notion that international election observation is designed only to observe the election process and supports the augment that it aids in capacity building of EMBs. For example, organisations such as the SADC Electoral Commission Forum deploy observers as part of their peer review exercise. They use these missions to share experiences and evaluate the work of member Election Management Bodies (EMBs) in the same field. As a result, this has seen member organisations sharing infrastructure and members of EMBs imbedded in EMBS as part of capacity building efforts.

Recommendations arising from international observer missions have been used to inform post-election interface as well electoral review processes. Important to note at this juncture is that international election observation on its own will not succeed in providing confidence in the electoral process if its efforts are not complimented by other oversight mechanisms such as those provided by domestic election observers and electoral oversight that is provided by political parties. Domestic election groups, have over the years, provided oversight of the electoral process and have developed different methodologies to observe the electoral

processes such as long-term observations and short-term observation. Consequently, they have complimented the efforts of international observers.

In fact, and in most cases, international election observers rely on information provided by local observers to inform their reports since they are not on the ground for long compared to the time spent on observing the electoral process by local observers. The Kenyan election had inter alia three independent election oversight mechanisms, international election observers, local observers and political parties agents. All three mechanisms at face value appear to have been spot on, on the election. They made pronouncements on what they observed. For instance, the Election Observer Group (ELOG) Parallel Voter Tabulation (PVT) project, relied on polling station data collected from the polling stations and signed off by party polling agents. They noted a few issues and concerns relating to the voting, counting and tabulation of results at this level. Moreover, issues and concerns they observed were issues that did not significantly influence the "outcome" of the election.

The issue with the election was the transmission and storage of the results. This is what NASA, the petitioner, was basing its case on. International Observers made their pronouncement of the electoral process based on what they observed of the voting, counting and tabulation process. In fact, most of the preliminary statements issued by international observers spoke to and made pronouncements on the integrity of voting, counting and tabulation of results and questioned the integrity of transmission and the announcement of the results. In my opinion, they never gave the election a clean bill of health. The Carter Centre Preliminary statement see report pointed out issues related to the transmission of results, "although election day voting and counting processes functioned smoothly, the electronic transmission of results from the polling stations to the 290 constituency centres, where official results are tallied, proved unreliable." This observation also came out of the NDI preliminary statement see statement, the EU preliminary statement see statement, the Commonwealth statement see statement and the AU preliminary statement see statement.

The Commonwealth Preliminary statement noted, "Our overall conclusion is that the opening, voting, closing and counting process at the polling stations on 8 August 2017 were credible, transparent and inclusive". They avoided making pronouncements on the winner or on the results and this is important to note. They left room for the electoral process to be concluded, and issues raised by NASA, especially around the transmission of the results, to be addressed. That said, the election in Kenya also provided us with the opportunity to review the work of the international election observers. International election observation is usually undertaken as close to the election as possible to cut costs on deployment of long-term observers. As a result, this limits their observation of the entire electoral processes. The danger in this is that they may end up making pronouncements on the electoral process based on limited information. Observing the voting, counting, tabulation and announcement of the results does not give one an overall impression of the entire electoral process.

Thus, it is imperative that there is strong collaboration between international and local observers that have the ability to observe the entire electoral process. It's also imperative that international observers make pronouncements on the outcome of the election based on information collected from the entire electoral process and more importantly after the conclusion of appeals processes. The election also called into question the role of electoral

assistance, especially around the introduction of new technologies. The fact that the results transmission system was breached, and results manipulated calls into question the quality of electoral assistance provided to the EMB by international electoral IT experts. Systems can be breached, and systems can be hacked, but what was worrying in this election is the seemingly easy manner in which it was done. In terms of best practice, the electronic transmission of polling station results allowed the IEBC to present the aggregated presidential vote at the national level and thus providing an opportunity to electoral oversight bodies to compare their election results with those of IEBC. In fact, this is a process that should be adopted by most EMBs especially those going for elections such as Zimbabwe. As a result, this allowed NASA to provide evidence of election results manipulation and thus strengthen its case. Moreover, the announcement and posting of election results allowed parties to collect the results and conduct parallel voter tabulation processes that may have highlighted manipulation of election results by the IEBC. It's important that political parties conduct robust party agent training at local level on how to capture and transmit polling station results to their party headquarters for purposes of providing alternative data on the election results.

In response to the anti-observer commentaries, I wish to persuade them that the Kenyan scenario in effect highlights that the work of international election observers still remains relevant. It however also equally highlights the need to review some aspects of international election observation work. Admittedly, the electoral process like many others was far from perfect, but we should commend the people of Kenya for conducting a transparent and open electoral process up and until the results transmission process. Clearly the lessons that can be drawn from all is that the international election observation remain relevant. Recommendations from the statements of these election observer groups, including local groups, should be harnessed to inform post-election review efforts and prepare stakeholders for the October 17, 2017, Presidential election.

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