

T The Tanganyika Law Society

PRESS RELEASE

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Statement of the President of the Tanganyika Law Society on the Release of the Final Report of the TLS Observation Mission to the 31st October, 2010 General Elections

The National Electoral Commission granted the Tanganyika Law Society (TLS) observer status for the 31st October, 2010 General Elections on 30th August, 2010.

190 TLS Observers underwent training for this Mission. Four (4) full-day training seminars were held concurrently in four (4) different regions for the TLS Observers on Saturday, 24th October, 2010 and facilitated by trainers from the Tanzania Elections Monitoring Committee (TEMCO) on the practical modalities for observing elections.

The TLS Observers were deployed on Friday, 29th October, 2010 to ten (10) regions across the country, namely: Tanga, Arusha, Mwanza, Dodoma, Dar Es Salaam, Tabora, Mbeya, Moshi, Mtwara and Mara.

The TLS's objectives in the observation of the elections were guided by our Vision of "a society where justice and the rule of law are upheld". In line with this Vision, it is our view that elections – when held freely and fairly – are a clear indication that the will of the people is being respected."

It is the TLS's view that the National Electoral Commission's (NEC) performance in this year's elections was professional and that the results declared are credible. The TLS also determined that the elections were held in a free and fair manner. On the basis of preliminary investigations, the TLS released its Interim Report on the 5th of November, 2010 to the NEC, the media and other stakeholders confirming the same.

We will be submitting our final report to the NEC tomorrow morning but have submitted an electronic copy of the same today. In our final report, we commend the National Electoral Commission and the citizens of Tanzania for engaging in an overall peaceful and transparent election. The position of the TLS Observation Mission is that the General Election met the criteria for fair and free elections, in that the hallmarks of a democratic election were met and upheld by the government. Voters were not intimidated or coerced into voting, all political parties were able to engage in campaigning prior to the elections, and the actual elections were conducted in an open and transparent manner.

A notable success for the NEC TLS Observation team was the manner in which people with disabilities were assisted in their right to vote. Almost all of the TLS Observers noted

that people with disabilities were accommodated and provided with the necessary assistance in order to cast their vote.

Having noted this, the TLS Observers noted several issues and made recommendations as follows:

I. PROCEDURAL & LOGISTICAL

1. Polling/Counting Agents

The Election laws provide for the presence of representatives of all political parties at all the polling/counting sites (numbering over 52,000). However, there have been complaints about the feasibility of doing so – it is neither practicable nor affordable to engage (and pay) representatives to effectively monitor 52,000 sites on the Election Day and subsequently until the final count is completed and the results announced.

2. Educate Voters

As empowered, and required by the law, the NEC should make a greater effort to educate voters in advance of the elections, not only about polling day, but on all other matters touching on the general elections, including how the elections will be administered. Voter education was one of the main concerns that arose on Election Day for the TLS Observers. Voters were unsure how to vote, or about the process of how the tallying process would be conducted.

3. Investigate Low Voter Turnout

The TLS Observers observed that the voter turnout in the 2010 General Election was overwhelmingly lower than in previous years, and in some voting stations, there was a record of as low as only 29%, which shows high voter apathy and perhaps a lack of confidence in the democratic processes in Tanzania.

The TLS recommends that the NEC investigate the low voter turnout, publically disseminate its findings, and develop a plan for increasing voter participation in the 2015 General Election to include wide-spread sensitization and awareness raising.

4. PNVR

As noted above, the PNVR was developed prior to the 2005 elections to create a permanent voter registration system. However, it was observed by TLS Observers that the PNVR is not yet fully complete and is laden with issues, including missing names of voter, improper names of voters, and inconsistencies in voter constituency information. All of these issues served to either prevent voters from casting their vote, or delay the voting process, hence frustrating voters.

5. Polling Day Logistics

The NEC should devise appropriate strategies before the Election Day for the efficient conduct of elections and to supervise all election activities including the availability and distribution of election materials, well designed instructions (which should be known by all election officers), and forms for vote tallying processes at the ward levels.

It is the position of the TLS that the lack of knowledge by the NEC officials may have contributed to the delay in the counting and tallying of the results. It is well known that one of the tests for free and fair election and election credibility is timely announcement of results. The five-day delay created much agitation and discontent. Therefore, it is imperative that the NEC look on this issue in advance of the 2015 General Election.

Furthermore, voter lists at polling stations should be posted in a location free from potential damage (by people, weather etc). It was also noted by TLS Observers that the emergency/hotline to contact the NEC on Election Day was not operational or available at all times. The NEC should ensure that in the 2015 General Elections, the hotline is fully operational.

6. Officers and Other NEC Staff

In order to conduct elections successfully, adequate arrangements and preparations are required in terms of human and financial resources. In the legal fraternity we have a natural law principle which says that "justice should not only be done but it should manifestly and undoubtedly be seen to be done". It is therefore, desirable that the appropriate measures be sought and taken to appoint people who are perceived to be neutral and impartial to voters.

7. Transport of Ballot Boxes

Adequate means of transport for ballot boxes and election officials after polling should be well arranged in advance. In many of the polling centres, although vote counting was completed by 21:00hrs, boxes were not timely collected – often time, collection was after midnight and in other stations, the following morning. In many cases, the election officers had to spend the whole night guarding the boxes. Similarly, at the ward levels, the transport of ballot boxes was delayed to the constituency tallying centres. These delays clearly disenfranchised the voters and sparked the skirmishes

8. Tallying of Votes

It was observed that some of the delays in the presidential and parliamentary votes tally were due to the fact that these were not counted at the ward level. It is the view of the

TLS that the NEC should attempt to build the capacity at the ward level in order for the tallying of parliamentary and presidential votes to be conducted at this level.

This is intended to simplify the overall tallying process at the constituency level. The TLS is of the opinion that once all the ballot boxes have been received at the ward centres,

The TLS is of the view that the NEC is capable of devising methods to ensure timely announcement of all results within two days after the Election Day and should strive to do so for the 2015 General Election.

II. LEGISLATIVE

The TLS Observation Mission identified the need to overhaul the Constitution of the United Republic of Tanzania. In the same vein, we found it prudent to review the laws touching on elections to examine the extent to which the 2010 General Elections were conducted in accordance with best practices.

As mentioned before, the Constitution of the United Republic of Tanzania, supported by the laws of the land, prescribes the rights and duties of all players including the government. It is through the laws that order is maintained in a society and from whence a society can build confidence in its government and citizens. Therefore, after review of the current laws in place, combined with the observations of the TLS Observation Mission, the TLS makes the following recommendations:

9. Candidates with No Party Allegiance

The TLS recommends that the Government initiate a consultative review of the Constitution to ensure that the views of the citizens are adequately captured to ensure that the nation's constitutive document keeps pace with the current needs of the people as well as with the international standards and best practices.

10. Challenging Results of Presidential Votes

There is no legal remedy in the event that one would wish to challenge the outcome of the Presidential election. Article 41(7) of the Constitution of the United Republic bars any proceeding to challenge the election of the President once the NEC has declared the results subsequent to the counting of the votes.

It is the view of the TLS that there seems to be no rational basis for this section to stand particularly since it allows room for abuse and the provisions for impeachment don't offer the necessary safeguards to remedy such abuse and certainly doesn't serve as a disincentive. Denying the right to contest the Presidential elections only serves to stifle democracy and the people's confidence.

11. Appointments of the NEC Officials

Under the National Elections Act, the President appoints all the seven members of the Commission.

The widespread feeling is that the appointments do not appear politically impartial or neutral, and that satisfactory vetting of the appointees is not guaranteed.

The TLS proposes that a different appointing authority should make the appointments, or prior nominations should be made transparently by a competent 'nominating committee' answerable to the people through an accountable organ, such as the National Assembly (Bunge).

It is our hope that the NEC will look on our report in totality and that they will find that the information contained therein will contribute tremendously to the improvement of the electoral process in Tanzania and to the legal and democratic framework in the United Republic of Tanzania.

In view of the recommendations made in the report, I would wish to offer up mine and the general members of the Tanganyika Law Society's services to the NEC and the Government of the United Republic of Tanzania when they are ready to move forward with these recommendations.

We trust that we will be able to work closely together in the spirit of unity and partnership.

Thank you for listening.

God bless Africa! God bless Tanzania!

Submitted by:

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President – Tanganyika Law Society