

THE
CARTER CENTER



OBSERVING KENYA'S MARCH 2013
NATIONAL ELECTIONS

FINAL REPORT

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OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

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FOREWORD

By Dr. John Stremlau
Vice President for Peace Programs, The Carter Center

Peace prevailed throughout Kenya's 2013 election cycle, protected by a national determination to avoid the personal tragedies and public humiliation of the violence that erupted following the release of disputed election results in 2007. Although the 2013 elections were intensely competitive, political leaders of all major factions and their followers demonstrated a collective self-restraint to ensure that the process remained peaceful and in accord with the provisions of a new constitution.

The Carter Center mission to observe the March 4, 2013, voting began in mid-January and continued through late April until the final results were released and challenges decided. On election day, the Center had 52 trained observers from 27 nations deployed across all provinces of the country. Our findings are detailed in this report.

The former president of Zambia, the Honorable Rupiah Banda, provided his wise counsel and leadership for this mission, which was managed by Carter Center Associate Director Dr. David Pottie, with the support of Kenya Field Office Director Stéphane Mondon and their staffs. The Center is also grateful to the citizens of the United States, Norway, and the United Kingdom for their financial support to this election observation mission.

The 2013 elections posed an array of new challenges for Kenyan electoral authorities and voters. Constitutional and electoral system reforms were intended to encourage greater pluralism as a check on the ethnic polarization that has excluded smaller groups and is widely perceived to have fueled the conflict over results that brought the country to the brink of civil war in 2007. Presidential voting patterns appear to correlate with historic ethnic divisions, but in the legislative, gubernatorial, and local races, the picture is much more complex. More than 12,000

candidates ran for office, and there were numerous upsets that suggest public restiveness with the status quo, with new voting patterns yet to be analyzed.

Kenya's mainstream independent print, radio, and TV media sustained round-the-clock coverage in the best spirit of public education broadcasting—explaining what was happening at every stage in what amounted to a national civics course—all the while calling for patience, peace, and national unity. Religious leaders and those from business, universities, and civil society joined the campaign with interpretive interviews.

The fundamental question this election raises is whether the election will reinforce archaic ethnic nationalism or mark a turning point toward the civil nationalism so essential for sustaining democratic development and curbing the cancer of corruption. Voting patterns suggest that the ethnic patterns evident in the 11 elections in the 50 years since independence persist.

The new president, Uhuru Kenyatta, is of the largest and historically most powerful Kikuyu ethnic faction, which has dominated Kenyan politics since the country's founding. Kenyatta is the country's fourth president and the third Kikuyu following his father, Jomo, and the incumbent, Mwai Kibaki. Daniel arap Moi, the only exception, is from Kenya's second largest ethnic group, the Kalenjin, as is Kenyatta's vice president, William Ruto. The 2007 conflict was primarily between the Kenyatta and Kalenjin factions, with both men subsequently indicted by the International Criminal Court for their actions. These indictments continue despite their alliance and election victories.

March 4 election results showed the Kenyatta and Odinga parties with the largest (and nearly equal) factions in a Parliament that also has good minority-party representation. Viable coalitions will be necessary if any work is to get done. The presidential runner-up, Railia Odinga, a Luo, has avoided



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provocative actions to national and international acclaim and is a leading member of the parliamentary opposition.

The Carter Center is pleased to have been invited and allowed to monitor, analyze, and report on the electoral process, freely and independently with unconstrained access. We were the only international nongovernmental observer group, and we benefited from consultations and sharing information with intergovernmental observer groups, including the African Union, the European Union, and several

subregional intergovernmental organizations. We were also especially encouraged by the cooperation and excellent work of an important new domestic consortium of Kenyan civil society organizations, the Elections Observation Group, that deployed more than 7,000 citizens in all 290 voting constituencies on election day. We hope this large and diverse mix of foreign and domestic observers has given needed credence to Kenya's reformed electoral system and helped advance the country along the ever-difficult democratic pathway to permanent peace.



EXECUTIVE SUMMARY

On March 4, 2013, the Republic of Kenya held its fifth elections since the re-establishment of multiparty politics in 1991. The country has a longstanding history of ethnic-fueled electoral violence, which culminated in postelection violence in 2007–2008 that left more than 1,000 people dead and over 600,000 internally displaced. The 2013 elections represented a unique occasion for Kenya to turn away from past electoral violence. These elections were the first to be conducted under the terms of the new constitution adopted by referendum in 2010 and with a new electoral management body, the Independent Electoral and Boundaries Commission (IEBC). The registration of 14.3 million voters and the organization of two by-elections in 2011 reinforced public trust in the commission prior to conducting its first general elections. The commission invited The Carter Center to deploy an international election observation mission to provide an impartial assessment of the electoral process.

The Carter Center launched its election observation mission in Kenya in mid-January 2013 with the deployment of 14 long-term observers from 11 countries. Closer to election day, an additional 38 short-term observers from 19 countries were deployed to observe voting and counting. The mission was led by Rupiah Banda, former president of Zambia, and by Dr. John Stremlau, Carter Center vice president for peace programs. The Carter Center made its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties.¹ The Center's observation mission was conducted in accordance with the Declaration of Principles for International Election Observation, and all its observers signed the IEBC Code of Conduct for Election Observers.²

On March 9, 2013, Uhuru Kenyatta was declared by the chairman of the IEBC as the fourth president-elect of Kenya, with 6,173,433 votes, or 50.07 percent

of the votes cast. These percentages reached the required double threshold of 50 percent plus one vote and 25 percent of the votes in half of the counties in order to be elected in the first round of election.

This margin was achieved with 8,418 votes, making it a very close victory. Kenyatta's closest contestant, outgoing Prime Minister Raila Odinga, received 5,340,546 votes, or 43.31 percent. In third place, Musalia Mudavadi obtained 3.93 percent, and the other five presidential candidates each received less than 1 percent. Total national voter turnout was slightly more than 86 percent.

The two major party coalitions, the Coalition for Reform and Democracy (CORD) and the Jubilee Alliance, won the majority seats in the elections. In both the National Assembly and the Senate, Kenyatta's Jubilee Alliance secured the majority of seats and marshaled their numbers to win the coveted speaker's position in each house. In the National Assembly, Jubilee won a majority with 195 seats, followed by CORD with 143 of the 350 seats. In the Senate, Jubilee and its affiliates secured 34 of the 68 seats and CORD 27.

¹ Kenya has signed and ratified, amongst others: African Union (AU) Charter on Human and Peoples' Rights, AU Convention on Combating and Preventing Corruption, U.N. International Covenant on Civil and Political Rights (ICCPR), U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), U.N. Convention on the Rights of People with Disabilities (CRPWD), and U.N. Convention Against Corruption. United Nations Human Rights Committee, General Comment 25 on "Rights to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service" is persuasive upon Kenya.

² More than 40 intergovernmental and international organizations have endorsed the Declaration of Principles for International Election Observation since its commemoration at the United Nations in 2005. International meetings on the implementation of the Declaration of Principles are held each year to allow members of the observation community to discuss critical challenges facing observation and how best to advance the field.



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The Coalition for Reform and Democracy won 23 governorships, and Jubilee came in second with 18, while the smaller Amani Coalition won three, and the remaining three were unaffiliated. In the county assemblies, both CORD and Jubilee dominated in their respective strongholds and shared a relatively equal number of seats elsewhere.

In a slight improvement from the outgoing Parliament, the number of directly elected women in the National Assembly increased from 10 to 16 (plus 47 women in the reserved seats for women and another four in nominated seats for 67 total). No women were elected as governor or senator, which shows that progress still needs to be made in order to ensure that women achieve at least one-third representation.

KEY FINDINGS AND RECOMMENDATIONS

The watchwords of Kenya's 2013 elections were transparency, security, and credibility—and the elections were a dramatic improvement compared to 2007. The elections were largely peaceful, and for that, all Kenyans deserve to be congratulated, especially the candidates—presidential and other—who failed to win seats but accepted the results. In this final report, The Carter Center assesses the conduct of Kenya's elections against the country's legal framework and obligations for democratic elections. In order to improve future elections, the Center hopes the conclusions and recommendations in this report will be taken under advisement. The main findings and recommendations of the Carter Center's election observation mission are as follows:

Legal Framework

Strengthen women's representation and introduce party funding regulations

Overall, Kenya fulfilled its obligations to ensure that a sound and comprehensive legal framework was in place for the 2013 elections. Although Kenya's constitutional and legislative reforms provided Kenyans with the basic framework for genuine

democratic elections, the Center is disappointed by several weaknesses.

The Carter Center especially regrets the Parliament's failure to adopt a quota reserving one-third of elective positions for women. Although the constitution reserves 47 seats in the National Assembly and 16 in the Senate³ for women, only 16 women were directly elected to the National Assembly and none were directly elected to either the Senate or governorships. The election results, therefore, demonstrate that while the system of reserved seats for women was enthusiastically adopted, women fared poorly in other directly elected offices. Important amendments to the electoral system should be considered to strengthen the representation of elected women in Kenya.

Another disappointment was the failure of the outgoing Parliament to introduce new political party funding regulations to govern the 2013 elections. Although the Political Party Act of 2007⁴ provided rules on the attribution of public funding to political parties, the Center encourages National Assembly members to introduce a new political parties act that addresses the importance of equitable resources—financial and other—for political parties and candidates to compete on a more level playing field. Particular attention should be paid to campaign finance, including possible public financing of parties, regulation of donations to parties, limits on campaign spending, and disclosure requirements.

Electoral System

Continue reforms to strengthen accountability and performance

Kenya has embarked on an ambitious political and electoral reform project in the redesign of elected representation and the creation of an entirely new

³ The constitution also distributes among gender the seats reserved for youth and disabled in the four representatives to be appointed by political parties in proportion to their representation in the upper house of the Senate.

⁴ The Political Party Act of 2011 changed the rules on the attribution of funds to political parties but was not applicable for the 2013 elections. The rules of the election act of 2007 were applied.



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county level of administration. Kenyan voters cast six ballots on March 4, 2013, for president, National Assembly, Senate, county governors, county assembly representatives, and women's representatives. Although it may be several electoral cycles before the specific effects of the electoral system become apparent, the overall framework creates more opportunities for Kenyans to seek elected office and participate in public affairs. The Center hopes that reforms in democratic governance and public service delivery and accountability will continue.

Election Management

Continue to invest in the capacities and independence of the election commission

The Independent Electoral and Boundaries Commission faced more scrutiny in the 2013 elections than any other Kenyan political institution.

As a democratic institution, the commission is more than a technical body and must manage complex political and power relationships—including international donor relations—while maintaining an open line of communication with the public. On these counts, commission Chairman Ahmed Issack Hassan and the other commissioners should be commended for balancing different pressures while trying to deliver on-time elections. Where management and operational performance may be improved, the Center hopes that the findings of this and other observer reports will be of value.

Voter Registration

Expand commitment to an accurate and credible voter register and review management of technology applications

The IEBC largely met its obligations to build an accurate and comprehensive voter register, operating under significant time constraints, some of which were beyond its control. However, early problems with the tender and procurement of biometric voter registration equipment compressed the entire electoral calendar. In order to ensure the transparency of the tender and procurement processes and prevent

corruption, the management of election technology should be reviewed and revised.

The last obtained voter register figures revealed low rates of registration in several regions of the country and among some marginalized communities. Efforts should be redoubled to make their future inclusion possible. Any restrictions on the right to register as a voter should be consistent with international standards. The period for public verification of the voter register was reduced to only two weeks, an inadequate time to allow citizens to confirm if they were registered, and other election actors had inadequate access to the voter register before the elections.

The IEBC should review the principal technology applications acquired for the 2013 elections (notably, biometric voter registration, electronic voter identification, and the system for electronic transmission of provisional results) with specific attention to the integration of technology management and the IEBC's other critical processes such as political party liaison, public information, and logistics and security. For future elections, the biometric voter registration system, if effectively and sustainably managed and joined with effective electronic voter identification at polling stations, could strengthen confidence that a person's right to vote is safe and secure.

While the commission's decision to compress the time frame for voter registration and public inspection of the voter roll was done on the basis of expedience, it nevertheless put pressure on the integrity of the voter registration process, notably the identification of polling stations and allocation of voters. As a result, many polling stations had thousands of registered voters who had to be divided into "streams," generating very long lines and causing serious delays on election day. However, this did not appear to discredit the overall voter registration process.

Voter Education

Deepen commitment to voter education

The Independent Electoral and Boundaries Commission has a constitutional responsibility for voter education and should provide leadership in this regard. While the commission worked closely with



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outside partners to develop voter education programs, earlier engagement with partners and preparation of materials as well as sound financial support for partners will enhance the effort. Greater effort should be made to ensure that voter education materials are comprehensible for illiterate, semi-illiterate, or blind voters.

Candidates, Parties, and Campaigns

Improve access to candidacy, deepen internal party democracy, and consolidate peaceful aspects of campaigns

Overall, Kenya partially fulfilled the large set of international obligations that support the numerous political rights of its citizens, including the right to participate in public affairs, freedom of association, freedom from discrimination, and guarantees of the security of the person as they relate to candidates and political campaigns. The Center observed the effects of highly differential levels of wealth and resources available to candidates, especially for the presidency, and particularly for all women candidates. More effective legislative, institutional, and civil society support for equitable campaign finance regulation (of various means) could provide a more level playing field for aspirants and parties, especially women, youth, and minority candidates.

Other important areas of further reform deserve attention, notably 1) improved regulation and/or oversight of party primaries to promote internal party democracy and ensure fair and equitable opportunities for aspirants to seek their party's nomination, 2) realizing the country's commitment to ensuring that at least one-third of elected positions are held by women, 3) continuing to build a political culture that enables all voters and candidates to enjoy their right to security and freedom from discrimination, harassment, and intimidation.

By accepting the election results as credible or by taking their petitions to the appropriate legal bodies, presidential and other candidates demonstrated their respect of the IEBC's independence and their commitment to a peaceful electoral process.

The Media

Sustain media access to all phases of the elections; enforce regulation of hate speech and bias

Media access to the election results is an important means to strengthen transparency in the electoral process. Real-time media access to the receipt of electronic provisional results in the national tally center in Nairobi was an important innovation that should be repeated in future elections. The IEBC allowed the press to set up on site and convened regular press conferences to update the public on the tabulation process. Live media broadcasts showed IEBC returning officers reading out results at the constituency and county tally centers and where they declared winners, handing over certificates of election to the winning candidate. This transparency is welcome and should be maintained at all levels.

Security Forces

Build on a record of largely peaceful 2013 elections and strengthen public service commitment to security forces

Kenya's security services should continue the initial improvements that have been implemented at the very top of the leadership hierarchy (such as public access and civilian review of key appointments) to reestablish the spirit of public service and accountability of the police force.

The history of violence in Kenya's political system goes beyond election day and affects the entire electoral cycle. The government of Kenya, political parties, and others are encouraged to identify and address the challenges facing police in the conduct of their duties (conditions of work and wages, equipment, and facilities, among others) to provide incentives to individual officers to resist inducements from political actors, criminals, or other outside actors, especially during electoral periods. In addition, training in human rights and community policing should be enhanced for all members of the police force, with special reference to the intersection of electoral offenses and ongoing security concerns in Kenya.



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Paul Karuki Mumene



Despite the heat, long lines of voters waited outside polling stations on March 4.

Voting

Continue largely successful voting operations

Kenya largely met its obligations in the conduct of polling and counting operations in the 2013 elections, despite the failed implementation of electronic voter identification technology. IEBC polling station officials successfully implemented well-elaborated voting and counting procedures that included many current best practices. The practices included inking a voter's finger after voting to deter multiple voting and providing candidate agents with a copy of the polling station results to support transparency.

However, the compression of the electoral calendar appears to have put the implementation of other operations under immense strain. In particular, the IEBC's effort to introduce electronic voter identification failed in approximately 50 percent of polling stations, a rate observed by the Center and other groups. The Center also noted the successful adaptation of polling station officials who reverted to their polling station's segment of the paper voter roll.

Kenyans' right to participate in public affairs as voters, election officials, and candidate agents on election day was widely observed by the Center. The high voter turnout of more than 80 percent appears to be a strong vote of confidence by Kenyans in their electoral process, though admittedly, voters often reported varying motives for turning out at the polls.

Technology

Review technology and learn from experience

Should electronic voter identification technology be retained for future elections, the IEBC should do so only after a thorough assessment of lessons learned and a cost-benefit analysis that includes consideration of the high costs of technology, staff training, and deployment of the equipment compared to the actual security provided to the voting system. If the electronic voter identification device is to be used again, logistical planning needs to be strengthened, especially to provide alternative ways to charge the device



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in areas where electricity is not widely available.

Long queues of voters are apparent in many elections, and Kenya's elections were no exception. Although such queues are generally cited as signs of the enthusiasm and patience of voters, they also may be an indicator of problems that should be addressed. In some cases, it was evident that far too many voters were assigned to some polling stations. The IEBC should review its distribution of polling locations, the number of those stations, and the number of voters assigned to them. The number of voters per polling station should be reduced to 500 maximum, and the number of streams should be reduced at any one location. Alternatively, more locations should be created to avoid long queues and long waiting times to vote. Change may also require a survey of the types of locations that served as polling stations, the number of entry and exit points, queue management by election officials outside polling stations, and the visible display of clear information to direct voters to the appropriate polling station.

Tabulation and Results

Provide detailed procedures for tabulation of election results; ensure access for election agents and observers; publish polling station results

Overall, Kenya partially fulfilled its obligations to ensure that the will of the people, as expressed through the ballot box, was accurately recorded and communicated. Important provisions were implemented to increase transparency while maintaining adequate security for the integrity of the ballot box.

The Carter Center commends the IEBC for setting up the national tally center in an accessible, centralized, and appropriate location in Nairobi. The public display of electronic provisional results at the time of their arrival at the national tally center was also a positive measure toward transparency; however, the

unreliability of the data displayed through the tabulation process threatened to undermine political party and public trust in the commission. A strengthened system of checks on the quality of transmitted results will be an important reform since the dissemination of unchecked figures, especially the inaccurate number of rejected ballots, could have fueled a strong public reaction and damaged public trust in the ability of the commission to produce reliable election results.

Carter Center observers enjoyed appropriate access to the tabulation process at the county and constituency levels where crucial steps in the tally process occurred and where many elective positions were declared. But access to the national tally center was inadequate and limited to the galleries, too far removed to have meaningful access to the receipt and processing of tally forms. Election agents were similarly excluded. The

IEBC is encouraged to take steps to remedy these concerns, including:

- Provision of detailed illustration of the layout of tally centers at the constituency, county, and national level with a clearly defined flow of materials and responsibilities of election officials at each step. The procedures should also explain the review and audit of results by election officials to ensure adequate and transparent safeguards are in place. These procedures should be published well in advance and shared with all stakeholders.
- Access for party agents and accredited observers should be accommodated at constituency, county, and national tally center levels so that they can adequately monitor the receipt, handling, and compilation of results. Such access would help ensure the security and transparency of results and would help identify incomplete, inaccurate,

A strengthened system of checks on the quality of transmitted results will be an important reform.



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or otherwise problematic tabulation forms and/or results previously released to the public that were changed.

The IEBC has not published detailed election results by polling station or level of tabulation. This is unfortunate, as it removes the value of an important means of public verification of results. The posting of a copy of polling station results not only is a useful means to publicize local results but also is most effective when the public, parties, and observers can use the posted polling station results as a check on how results are managed through the entire tabulation process. Of direct benefit to parties and candidates, access to this information will signal where they received support and where they did not, providing a potential guide to future efforts at public outreach. The principle of access to information, the objective of greater transparency in the results process, and the goal of securing more credible election results can all be served by advance planning and implementation of a complete results management system.

Dispute Resolution

Promising judicial reforms should be continued; strengthen experience with electoral dispute resolution

There appears to have been a popular renewal of public confidence in the judiciary with the improved vetting of magistrates and the appointment of a trusted individual, Willy Mutunga, as chief justice of the Supreme Court. Though still in early stages, the initial judicial reforms created a more credible dispute resolution mechanism that contributed to a peaceful election.

Kenya's judicial institutions and framework for managing electoral disputes met the country's obligations to provide citizens with the right to appeal in a timely and public fashion. Presidential election petition proceedings were held in a very professional and rigorous manner.

The Center hopes that the 2013 experience will be reviewed to generate a written record of best practices and areas for improvement.



THE CARTER CENTER IN KENYA

ELECTION OBSERVATION METHODOLOGY

Since 1989, The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.⁵ The Center is among 40 intergovernmental and international nongovernmental organizations that have endorsed the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005.⁶ Endorsing organizations pledge their commitment to assuring integrity and transparency in election observation missions and look to these documents to guide the purpose, scope, and conduct of their missions. The purpose of election observation is to provide

a credible and impartial assessment of the electoral process and, when relevant, to make recommendations to improve future electoral processes.

Criteria for Election Assessment

The Center assessed Kenya's electoral processes based on the country's legal framework and its obligations for democratic elections contained in regional and international treaties. The major sources of Kenya's international and regional obligations are reflected in Table 1.

The structure of this report is designed to reflect the fundamental rights and obligations contained in these treaties, against which The Carter Center assessed Kenya's elections.⁷

Table 1

Treaty/Declaration	Status	Date
U.N., International Covenant on Civil and Political Rights	Ratified	May 1, 1972
U.N., International Convention on Economic, Social, and Cultural Rights	Ratified	May 1, 1972
U.N., Convention on the Elimination of Discrimination Against Women	Ratified	March 9, 1984
U.N., Convention on the Rights of the Child	Ratified	July 30, 1990
U.N., Universal Declaration of Human Rights	Ratified	July 31, 1990
AU, African Charter on Human and Peoples' Rights	Ratified	Jan. 23, 1992
U.N., International Convention on the Elimination of All Forms of Racial Discrimination	Ratified	Sept. 13, 2001
OAU, Convention on the Prevention and Combating of Terrorism	Ratified	Nov. 28, 2001
U.N., United Nations Convention Against Corruption	Ratified	Dec. 9, 2003
AU, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	Signed	Dec. 17, 2003
AU, African Union Convention on the Prevention and Combating of Corruption	Ratified	Feb. 3, 2007
U.N., United Nations Convention on the Rights of People with Disabilities	Ratified	May 19, 2008
AU, African Charter on Democracy, Elections and Governance	Signed	June 28, 2008

⁵ For past Carter Center election observation mission reports, including the Kenya 2002 elections, visit http://www.cartercenter.org/news/publications/election_reports.html.

⁶ For the text of the declaration, visit: http://www.cartercenter.org/peace/democracy/des_declaration.html.

⁷ See Appendix J for further details. Also, to access the database, visit <http://www.cartercenter.org/des-search/des/Introduction.aspx>.



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Deployment of Long-Term International Election Observers

Following an invitation from the Independent Electoral and Boundaries Commission to The Carter Center to deploy an international election observation mission to Kenya, in January 2013 the Center launched its observation mission, deploying a small core team to Nairobi to establish a local office and begin in-country logistical preparations for the mission. Shortly after, 14 long-term observers from 11 countries arrived in Nairobi and were briefed and deployed by the end of the month to begin assessing the campaign period and electoral preparations.

The Carter Center believes that assessment of all aspects of the electoral process—both before and after election day—is essential to determining the extent to which the electoral process, including voter registration, campaigning, and voter education efforts, fulfills the international and regional obligations of the country. The presence of long-term international observers allows the development of a relationship with election officials, party candidates, members of civil society, and other stakeholders in the electoral process, providing the mission with valuable insight



The Carter Center

On election day, The Carter Center deployed 38 observers from 19 countries. They visited 265 polling stations in 34 counties.

into the political environment and the status of election preparations. The process also increases understanding on the part of the host country about the role of international election observers.

The long-term observers remained in their areas of responsibility to observe the tabulation process as well as postelectoral developments, including the announcement of results. In addition to their observation work, they worked in anticipation of the arrival of the short-term observers and spent their time making the appropriate logistical arrangements to support the short-term observer delegation.

Deployment of Short-Term International Election Observers and Delegation Leadership

The short-term observers arrived in Nairobi on Feb. 27 and received two days of briefing before their deployment. For the voting and counting processes, the Center deployed 38 short-term observers from 19 countries, visiting 265 polling stations in 34 counties.

On election day, Carter Center observers used an election monitoring program on handheld tablets to electronically submit checklist data throughout the day. Staff members were available



The Carter Center

The Carter Center launched its observation mission in January, deploying a small core team and 14 long-term observers throughout the country.



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to each observer team to verify checklist data over the phone and ask pertinent questions throughout all stages of voting. Through the use of the program and the call center, Carter Center observers were also given the opportunity to report any unique or key issues occurring in their areas of responsibility. The checklist data collected generated reports that provided periodic updates to leadership and staff as the observations occurred.

The short-term delegation was led by Rupiah Banda, former president of Zambia, and John Stremlau, vice president of the Carter Center's peace programs. Delegation leaders met with presidential candidates, the chair of the Independent Electoral and Boundaries Commission, ambassadors, civil society leaders, and other international and domestic election observer groups. They also visited polling stations on election day. Following the conclusion of

polling, observers were debriefed in Nairobi before departing the country. A press conference was held on March 6 to share the delegation's preliminary findings and to release a public report.

Release of Public Statements

In total, The Carter Center released seven public statements on its activities and findings during its international election observation mission in Kenya. Two of these statements were prepared and released jointly with several domestic and international organizations, including the African Union, the East African Community, the Intergovernmental Authority on Development, the Common Market for Eastern and Southern Africa, the International Conference on the Great Lakes Region, the Electoral Institute for Sustainable Democracy in Africa, the Commonwealth, and the European Union.⁸

⁸ See Appendix D for public statements released by the mission or visit www.cartercenter.org.



HISTORICAL AND POLITICAL BACKGROUND

From October 1952 to December 1959, Kenya was under a state of emergency that arose out of the Mau Mau rebellion against British colonial rule. During this period, African participation in the political process increased rapidly. The first direct elections for Africans to the Legislative Council took place in 1957. Then on Dec. 12, 1963, the Republic of Kenya gained its independence and joined the Commonwealth the following year. Upon independence, the country was ruled as a de facto single-party state by the Kenya African National Union (KANU), a Kikuyu-Luo alliance led by Jomo Kenyatta. A small but significant leftist opposition party, the Kenya People's Union (KPU), was formed in 1966, led by Jaramogi Oginga Odinga, a former vice president and Luo elder. The Kenya People's Union was banned shortly after and its leader detained. No new opposition parties were formed after that, and the Kenya African National Union became the sole political party.

As the country's first president, Kenyatta consolidated the Kikuyu position in government and in institutions such as the army and police, while also maintaining an ethnic balance in his administration. However, politicians from pastoralist ethnic groups came to exert a significant role within KANU, not least through the growing patronage wielded by Kenyatta's deputy, Daniel arap Moi, a member of the Kalejin tribe. Following Kenyatta's death in August 1978, Daniel arap Moi became president.

In June 1982, the National Assembly amended the constitution, officially making Kenya a one-party state, and parliamentary elections were held in September 1983. The next national elections, held in 1988, further reinforced the one-party system. In December 1991, Parliament repealed the one-party section of the constitution, which, in an environment in which lines were drawn by ethnicity rather than politics, led to mobilization on ethnic and religious

lines. By early 1992, several new parties had formed, and multiparty elections were held in December 1992.

Because of divisions in the opposition, the incumbent President Moi was re-elected for another five-year term, and the Kenya African National Union retained a majority of the legislature. In November 1997, parliamentary reforms expanded political rights, and the number of political parties grew rapidly. Due to the disunity of the opposition, incumbent President Moi was re-elected in 1997, again with KANU retaining the majority in Parliament with 113 of the 222 seats.

Daniel arap Moi's 24-year rule and KANU's four decades in power ended in December 2002 when he retired and opposition presidential candidate Mwai Kibaki won a landslide victory over KANU rival Uhuru Kenyatta, President Moi's chosen successor and the son of independence leader Jomo Kenyatta. President Kibaki received 62 percent of the vote, and his party, the National Alliance of Rainbow Coalition (NARC), won 59 percent of the parliamentary seats (130 out of 222).

THE ROLE OF ETHNICITY

Politicized ethnicity usually served narrow groups of officeholders and elites receiving their patronage, while the people for whose ethnic interests they campaigned remained mired in poverty. Following the 1992 elections, levels of political violence escalated, as did the extent of patronage along ethnic lines. By 2002, rampant corruption, a stalling economy, and a loss of international support fueled resentment against Moi while the previously fractured opposition united behind Mwai Kibaki.

As a Kikuyu, President Kibaki opposed his former ally and now main rival Raila Odinga, who is a Luo and son of Oginga Odinga. Raila Odinga drew strong support from Luos, especially from Nyanza and Western provinces, who comprise 12 percent of the



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Kenyan population and have long seen themselves as being denied the leadership of the country. On the other hand, Kikuyus, who make up 21 percent of the population, have dominated the country politically and economically since independence. Admittedly, the majority of Kikuyus and the poor of Kenya more generally have always been left out of the benefits that accrue to governing elites. While ethnicity is an important factor in political calculation in Kenya, it is impossible to predict political outcomes on this basis alone. Lines of ethnic and regional support have shifted from election to election as different alliances have been made.

POLITICS OF LAND

Kenya has suffered repeated waves of internal displacement in its recent history, due to political, ethnic, and land-related disputes. Land policies during the colonial period entailed the dispossession of the lands of many indigenous communities, especially in the Rift Valley, Nyanza, and the Western and Central provinces. During this period, an individual freehold title registration system was imposed, which effectively legalized the dispossession of these lands and replaced the customary mechanisms of land tenure. The freehold land title system was maintained after independence, along with the implementation of a number of market-based resettlement schemes regarding displacement. Neither of these policies and schemes questioned the injustice in the acquisition of the original land titles nor compensated or assisted those who had been displaced and did not have the financial means to acquire lands under the market-based resettlement schemes.

Land-related issues and ethnic tensions were further aggravated due to a number of factors, including corruption and ethnic politics that favored certain communities at the expense of others during successive governments. In the context of the rise of multiparty politics in the 1990s and national elections in 1992 and 1997, ethnic identity was used as a political instrument, which led to ethnic clashes throughout that decade, leaving thousands dead and

hundreds of thousands of internally displaced people. By the end of 2007, it was estimated that there were still 380,000 people internally displaced from the clashes of the 1990s.

The land grievances of communities such as the Kalenjin, Kikuyu, and Maasai, which had originally been dispossessed by the British, later became a key feature of national politics, successive election platforms, and related violence and displacement, as communities were intermittently either favored or evicted from contested lands, depending on the government in power.

ELECTION CRISIS OF 2007

President Kibaki came to be challenged by many of his 2002 allies, and he sought re-election in what became a highly controversial election in 2007. Kibaki and his Party of National Unity (PNU) claimed victory in the closely fought elections, an outcome vehemently disputed by the opposition Orange Democratic Movement (ODM). The fault lines in Kenyan society were exposed when competing political interests overlapped with ethnic differences. On Dec. 30, 2007, Kibaki was officially re-elected with 46.4 percent of the vote, compared to his opponent Raila Odinga's 44.1 percent. The announcement of results was met with widespread violence that largely exploited existing ethnic tensions.

In the Rift Valley, historic grievances against land allocations led to the mass targeting of Kikuyu by the Kalenjin (around 11 percent of the population), who regard the land in the Rift Valley as theirs. In Western Kenya, the Kikuyu also found itself under attack, with many fleeing for fear of their lives, while in the main Western Kenya town of Kisumu, dozens of Luo were shot dead by Kenyan security services, and women — including elderly ones — were raped, again allegedly by security forces. The Kikuyu criminal militia, known as the Mungiki, struck back around the town of Naivasha in the Rift Valley, targeting ethnic groups believed to support the opposition. The Ogiek, a hunter-gatherer indigenous group



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living close to Lake Nakuru, were attacked by gangs of Kikuyus from neighboring villages, backed up by armed Kikuyu police officers.

In February 2008, under intense international pressure, Kibaki and Odinga agreed to a power-sharing deal, but tumultuous talks on the formation of a joint Cabinet lasted into April. The result was the largest Cabinet in Kenya's history, one that nicely served the interests of elites on both sides of the conflict. By the time the power-sharing deal had been struck on Feb. 28, 2008, bringing together the Orange Democratic Movement and the Party of National Unity, approximately 1,500 Kenyans were killed, over 600,000 were displaced (figures vary), and an unknown number of women had been raped. Deep scars remained among the people of the Rift Valley in particular.

The context of the 2013 elections was set in the shadow of the postelectoral violence that polarized actors and stakeholders long before the beginning of the campaign. Avoiding violence became more important to the public and for political stakeholders than organizing credible elections. With a new set of rules, a new electoral management body, and new judges, the only element remaining from the past was the presidential candidates, most of whom were standing for the second or third time, and some of whom were directly implicated in the postelection violence of 2007–2008.

POLITICS OF SECESSION

Following the elections of 2007, there was a significant increase in public expressions of secessionist feeling on the Kenya coast. During 2010 and 2011, one manifestation of this feeling was the emergence of the Mombasa Republic Council (MRC), which demanded independence for the coastal region. The language of secessionism is historical, and it revisits the vivid political debates of the late 1950s and early 1960s, when politics in coastal Kenya revolved successively around two constitutional issues. The first was the possibility that the 10-mile Kenya Coastal Strip, nominally the sovereign territory of the Sultan of Zanzibar, might not become a part of independent

Kenya; the second was the “regionalist” constitution of 1963–1964.

According to Human Rights Watch, the vast majority of Coast province's nearly 2.5 million residents support the Mombasa Republic Council. The group claims treaties dating back to the end of colonization and the start of Kenyan independence would allow them to become self-governing in 2013. While the MRC's Christian and Muslim leaders say their mission is peaceful, the movement appears to be splintering. As the Kenyan government cracked down on MRC activities, some of the region's most vulnerable residents began turning to violence.

The Waki Commission

The government-appointed Commission on Postelection Violence, chaired by Justice Philip Waki of Kenya's Court of Appeal, carried out a four-month investigation into the politically motivated violence that rocked Kenya after the 2007 presidential election. The commission issued a stinging indictment of institutional failure and cited complicity of Kenya's internal security apparatus in gross human rights violations and crimes against humanity. The Waki Commission's report found that Kenyan security agencies “failed institutionally” to contain and prevent the violence.

The report accused some state agents of being “guilty of acts of violence and broad violation of the human rights of citizens” and states that such were the results of a trend toward institutionalizing violence against the public. It also states that 1,133 Kenyans were killed, with over 400 being killed by gunshots during the two-month period.

The report claimed that violence was spontaneous in some areas and a result of planning in other areas, and it discovered that some of those behind the violence included politicians and business leaders. Other findings of the commission were that spontaneous violence after the announcement of the 2007 election results morphed into planned violence against Party of National Unity supporters and revenge attacks against Orange Democratic



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Movement supporters. Therefore, the violence was not merely citizen-on-citizen attacks, it also consisted of systematic attacks against Kenyans based on their ethnicity and political persuasion. The final report also questioned the ability of the state internal security apparatus to protect Kenyans from violence, and the Commission on Postelection Violence took note of the fact that, in some cases, attackers traveled long distances, unhindered, to attack their victims.

The names of the perpetrators and sponsors of the violence initially were kept in a sealed envelope, pending establishment of the Special Tribunal for Kenya, but the names were later presented to Kofi Annan of the Panel of Eminent African Personalities after a parliamentary bill for the establishment of the tribunal was rejected in Parliament. It was hoped that the proposed tribunal would be set up in Kenya as a court that would try those bearing the greatest responsibility for crimes against humanity.

On July 9, 2009, the Kofi Annan-led panel decided to send the names of six Kenyans who bore the greatest responsibility for the violence to the International Criminal Court (ICC) prosecutor for investigation. On Dec. 15, 2009, the court indicted the six individuals: William Ruto, member of Parliament; Uhuru Kenyatta, finance minister; Henry Kosgey, the minister responsible for industrialization; journalist Joshua Arap Sang; civil service head Francis Muthaura; and Maj. Gen. (retired) Hussein Ali, the former police commissioner.

The committee also made recommendations on several elements concerning the functioning of the electoral commission. Among other things, it advised including Parliament in the process of appointment of commissioners, a review of the commission's procedures to ensure uniformity of performance from

polling station to the national tally center, improved training procedures, and clearer mandates for commissioners.

Government Inquiry and the International Criminal Court

Six Kenyans were initially charged by the International Criminal Court in connection with crimes during the election violence of 2007–2008, but the charges were dropped at the pretrial phase for two of them. In March 2013, the court also dropped charges against Francis Muthaura, leaving only Ruto, Arap Sang, and Kenyatta to stand trial for crimes against humanity. The fact that Kenyatta and Ruto ran for president and deputy president while under indictment by the court contributed to a campaign in which the international community was targeted for favoring international justice. Some Kenyans went to the high court to stop the two from contesting the elections, citing violation of the constitutional provisions for leadership and integrity.⁹

Some Western governments also expressed concerns that if Kenyans elected to the presidency men who were suspects due to appear at The Hague, that action could change the nature of their relations with Kenya and create risks of isolation by the international community. However, Kenyatta's April 11, 2013, court date clashed with the provisional schedule for a runoff election. In order to deter election-related violence over the matter, the prosecution agreed to delay Kenyatta's trial until after the elections. Since winning the presidential election, more than 90 witnesses have withdrawn their testimony against Kenyatta. His indictment remains a contentious issue and a potential challenge should the case be referred back to Kenya's legal system.

⁹ Chapter 6 of the Kenyan Constitution lists moral principles that any state official should respect in the exercise of his/her functions.



ELECTORAL INSTITUTIONS AND THE FRAMEWORK FOR THE ELECTIONS

THE CONSTITUTION

Kenya's 20-year debate over constitutional reform came to an end with the adoption of the new constitution in August 2010. The new constitution shoulders massive, popular expectation of the Kenyan people to bring significant social changes and political and legal reforms, promote democracy and development, and help alleviate tribal differences that have brought violence to the country. The constitution includes a well-elaborated Bill of Rights and a separation of power of the three arms of government. It provides for the devolution of resources and services through newly established county governments. The 2010 constitution radically restructured power and overhauled public institutions, with important consequences for the elections. It strips some power from the presidency, vesting it instead in the judiciary, legislature, and local governments, and increases the size of Parliament, reserving more seats for women and other traditionally underrepresented constituencies. It also mandates major judicial and police reform as well as reform of the political party system, campaign finance, and the media.

This third constitution of Kenya is a lengthy document—264 articles drafted by a commission of experts—that was submitted to direct public consultation through their members of Parliament. The proposed constitution was presented to the attorney general of Kenya on April 7, 2010; officially published on May 6, 2010; and approved by 67 percent of Kenyan voters in a largely peaceful and well-run referendum on Aug. 4, 2010.

Kenya's Bill of Rights recognized socioeconomic rights, giving equal treatment and opportunities to men and women, and guaranteed freedom of printed and electronic media. It also provided for the creation of an ethics and anticorruption commission. An

upper house was added to the pre-existing National Assembly, and the judiciary was reformed—notably in the way its members are appointed and the requirements for their qualification—along with a reaffirmation of its independence.

In addition, it forecasts the creation of an independent national land commission to maintain oversight and manage all land belonging to national and county government. The commission also recommends policy on addressing public complaints and advises the national government on ways to improve national and county land management, planning, and dispute resolution.

Under the new constitution, the executive branch consists of the president, deputy president, and the Cabinet. The president is the head of state and government and the commander-in-chief of the armed forces. He cannot be a member of Parliament but has the power to nominate, with prior approval of the National Assembly, and dismiss Cabinet secretaries and the attorney general. He also presides over all Cabinet meetings.

However, some of the most significant changes aimed to dilute presidential power. On paper, this should not only strengthen democracy but also reduce the stakes of the presidential polls and the dangers of zero-sum politics, which were identified as among the main drivers of the 2007–2008 violence. Many powers formerly held by the president are now shared with the judiciary and legislature. In particular, the new constitution denies the president the prerogative of unilaterally appointing key public officials, including election commissioners.

The constitution also introduced a new level of governance, the impact of which may be even greater than the checks on executive power. There are now 47 counties, each with its own governor, assembly, and senator elected to a newly established upper



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house, the Senate. This body mostly is responsible for regional affairs, including allocating the national budget outside Nairobi. The counties together will receive a minimum of 15 percent of the national budget, on top of local revenues.

County-government bodies are elected even though their exact mandates and their control over resources are contested. Moreover, although the new level of governance should give communities, including minorities, a greater say in how they are governed, it could also transfer political competition, violence, and corruption and create new minorities and new patterns of marginalization within counties. County assemblies should provide some check, but governors enjoy significant control over local resources. They are elected by plurality, according to a first-past-the-post system, which leaves nothing for losing candidates.

The constitution also introduced a gender quota to ensure that at least one-third of all elected seats were occupied by women.

In some counties, the electoral competition in 2013 for governorships was expected to be fierce, with strong fears of violence, especially since many existing local conflicts are about access to power and resources. Therefore, candidates had the potential to exploit and aggravate local grievances and disputes to mobilize electoral support.

LEGAL FRAMEWORK FOR ELECTIONS

A sound, legal, electoral framework is essential for the effective administration of democratic elections that adhere to national and international rights.¹⁰ The legal framework includes the rules found in the national laws of the country that regulate how all aspects of the electoral process will unfold, including electoral management, boundary delimitation, campaigning, voter education and registration, voting operations, and counting and dispute resolution.¹¹

The constitution dramatically changed the legal framework of the country along with other legislative reforms since the 2007 election. The 2013 elections were regulated primarily by the following texts:

- The Constitution of Kenya 2010
- The Elections Act No. 24 of 2011 and its arrangements of regulations
- The Independent Electoral and Boundaries Commission Act of 2011
- Political Parties Registration Regulations of 2007
- Political Parties Act of 2011
- Preservation of Public Security Act of 2009
- Public Order Act of 2009

The electoral framework was completely renewed after the adoption of the constitution in August 2010. The Elections Act, the Independent Electoral and Boundaries Commission Act, and the Political Parties Act were adopted by the outgoing Parliament in 2011.

The Right to Vote

The right to vote is a fundamental component of genuine democratic elections, and Kenya's commitment to the principle of universal suffrage requires that this right be extended to the largest possible electorate.¹² According to the constitution, every Kenyan adult citizen of sound mind who has not been convicted of an election offense during the preceding five years qualifies for registration as a voter.

Late Changes to Electoral Regulations

Good practices in achieving elections that meet international standards advise that no substantial

¹⁰ The elements of the electoral cycle form the essential basis of elections in which the public has the right to participate. See, for example, U.N. UNHRC, General Comment 25, para. 5, which states that the "allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by Art. 25 should be established by the constitution and other laws."

¹¹ The new constitution explicitly commits Kenya to follow international obligation. See Art. 2 (6) of the constitution of Kenya: "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."

¹² U.N. ICCPR Art. 25(b); Universal Declaration of Human Rights, Art. 21(3): "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."



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change to the electoral law should be made within six months prior to elections.¹³ Unfortunately, several amendments were made in this period, one of them withdrawing the obligation of party membership three months prior to party nomination. This amendment allowed candidates to switch parties at the last minute, opening the possibility of “party hopping” for losing aspirants and withdrawing an essential safeguard against fraud, manipulation, and back-dating of nomination documents.¹⁴

Three issues related to the legal framework of the electoral system deserve special consideration because of their impact on the structure of representation and ability of candidates to compete with one another. These are 1) the representation of women 2) campaign finance 3) timelines for presidential election petitions and dispute resolution.

Women and Representation in Elected Office

State obligations to promote de facto equality for women derive, in part, from broader political obligations regarding absence of discrimination and the right of all citizens to participate in the public affairs of their country regardless of gender.¹⁵ Through ratification of international and regional treaties, Kenya has pledged to promote the political participation of women on an equal basis with men. It has also made specific provision for the rights of women in the 2010 constitution.¹⁶

A key objective of Kenya's new constitutional and legal framework for elections—to strengthen the representation of women and ensure that they occupy at least one-third of all elected bodies—was only partially implemented.¹⁷ Multiple constitutional



Paul Kariuki Mumene

An elderly woman proudly exercises her right to vote in the 2013 polls.

provisions seek to strengthen anti-discrimination obligations and obligations regarding the representation of women, including:

- Article 27 (3) provides for equity and freedom from discrimination in the political sphere. It further affirms equal rights and opportunities for women

13 As the Organization for Security and Cooperation in Europe has noted, “The legal framework should be structured so that it is readily accessible to the public, transparent, and addresses all components of an electoral system necessary to ensure democratic elections, and is adopted sufficiently in advance of polling to be implemented.” See OSCE, Handbook for Domestic Election Observers, p. 36.

14 U.N. UNHRC, General Comment 25 on “The Right to participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service,” para. 1: “Whatever the form of constitution or government in force, the Covenant requires States to adopt such legislative and other measures as may become necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.” Poorly publicized, last-minute decisions to amend electoral regulations and procedures deny citizens “effective opportunity” to exercise their rights as envisioned by the covenant.

15 U.N., Convention on the Elimination of All Forms of Discrimination Against Women, Art. 3

16 Constitution of Kenya 2010, Art. 59(2)(b)

17 Constitution of Kenya 2010, Art. 81. Sec. 25, The Independent Electoral and Boundaries Commission Act, No. 9 (2011)



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and men, including the right to equal political, social, economic, and cultural opportunity. Subarticle 7 requires the state to put in place legislative measures for affirmative action to redress the gender discrimination.

- Article 81(b) provides that “not more than two-thirds of the members of elective public bodies shall be of the same gender.”
- Article 91 (f) requires that political parties “respect and promote human rights and fundamental freedoms, and gender equality and equity.”
- Article 100 requires Parliament to “enact legislation to promote the representation in Parliament of (a) women; (b) people with disabilities; (c) youth; (d) ethnic and other minorities; and (e) marginalized communities.”

In late 2012, the attorney general, together with the Federation of Women Lawyers–Kenya, Center for Reproductive Rights, the Center for Multiparty Democracy, the Katiba Institute, and the Kenya Human Rights Commission as interested parties, sought an advisory opinion from the Supreme Court on the constitutional implementation of the one-third gender rule.

Despite the progressive substantive requirements in the constitution, the Supreme Court advisory opinion delivered in December 2012 adopted a more lenient approach, concluding that the gender rule requirement is to be implemented “progressively” and full implementation would not be possible in the 2013 elections. The chief justice issued a dissenting ruling that implementation should be achieved earlier.

Implementation would have required an amendment to the electoral act, and the outgoing Parliament failed to do so. Had it done so, meeting the one-third threshold for the incoming National Assembly would have required a minimum of 70 elected women in addition to the 47 reserved seats. Without explicit quotas, this objective was unrealistic considering the low number of elected women in past Parliaments and the low number of women nominated to run for seats in the 2013 elections.

Campaign Finance

Second, to prevent corruption during the campaign period, campaign finance should be transparently managed to allow for full disclosure, particularly regarding the use of any public funds.¹⁸

Prior to the 2013 elections, public funding was provided to national political parties in proportion to the strength of their representation in Parliament or the votes garnered in previous elections. The Political Parties Act provided that political parties that garner at least 5 percent of all votes cast for the elections shall receive funds from the Political Parties Fund as determined by the minister of finance. Based on these criteria, only the two biggest presidential coalitions qualified for funding while the other smaller parties were left out, further widening the gap between the parties. Other private sources of political funding included personal funds, donations, and contributions.

Under the new constitution, Parliament passed a number of pieces of legislation essential for elections but failed to establish new regulations that could have strengthened the ability of candidates and parties to contest the elections on more equitable grounds. A new political parties funding regulation was left pending by the outgoing Parliament. In a regrettable contrast, the outgoing members of Parliament voted themselves a large payout as they left office and an increase in salary for those re-elected to the next Parliament. (The bill was vetoed by President Kibaki.) If enacted, this handout and pay increase would have provided incumbents with even more extensive financial and material advantages over challengers.

Presidential Election Petitions and the Electoral Calendar

There is no explicit provision for the possibility to challenge the results of the first round of the presidential election if a runoff becomes necessary. Article 140 of the constitution only provides for the

¹⁸ United Nations Convention Against Corruption, Art. 7



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possibility to file a petition against the “election of the president-elect,” but nothing is said about the possibility to file a first round petition when a runoff is required (as there is no “president-elect”). In an advisory opinion, the Supreme Court stated that it has jurisdiction over petitions on the first round of presidential elections. Despite the court’s opinion, this legislative oversight produced potential problems for the legislated electoral calendar. The constitution stipulates that a runoff is to be held 30 days following the announcement of results, but the introduction of the period for submission of an electoral petition and time for the court to issue a ruling generated speculation about multiple timelines for a runoff. The imprecision in the law produced speculation about possible timelines depending on how long the Independent Electoral and Boundaries Commission took to announce official results, whether there were any petitions, and whether the court used the entire time available to it for deliberations. By one calculation, it was possible that the court could issue a decision on the first round with a runoff to be held the following day.

ELECTORAL SYSTEM

The establishment of a clearly defined electoral system based in the law is an essential component for holding genuine democratic elections, although no specific electoral system is prescribed.¹⁹

The constitution made significant changes in the shape of the government and created a new administrative structure of the country. These reforms had an important impact on the elections, starting by holding elections for six different offices: president, members of Parliament (290), senators (47, one for each county), county governors (47), county assembly representatives (1,450 total), and county women’s representatives in Parliament (47, one per county) all on the same day.

The electoral system employs a mix of first-past-the-post, proportional representation, and nomination to ensure representation of special interests such as youth and people with disabilities. For the

presidential election, a candidate needs to win a majority of 50 percent plus one of valid votes cast and must secure more than a quarter of votes in 24 of the 47 counties to avoid a runoff. In principle, this means a winning candidate should enjoy support from different communities. The new provisions also encourage coalition building across ethnicities and regions. Alliances have been a key feature of Kenya’s politics since 2002, when a united opposition through the National Alliance of Rainbow Coalition defeated the incumbent Kenya Africa National Union. The new constitution makes it almost impossible for one party or ethnic group to win the presidency single-handedly, thus reinforcing this trend.

The National Legislature

The legislative branch is bicameral, with a National Assembly and a Senate. The National Assembly has 349 members partly directly elected by Kenyan citizens and partly appointed. It reviews the conduct of the office of the president, the deputy president, and other state officers and can initiate a process of removing them from office. It exercises oversight of state organs.

The National Assembly has 349 members in total based on:

- 290 elected in single-member constituencies using first-past-the-post
- 47 women in single-member constituencies (each of the 47 counties) by first-past-the-post
- 12 members nominated by the political parties in proportion to their members of the National Assembly and representing special interests including youth, people with disabilities, and workers
- 1 speaker who is an ex officio member and, therefore, not elected.

¹⁹ U.N., Universal Declaration of Human Rights, Art. 21(3). See also UNHRC, General Comment 25, para. 21: “Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by Art. 25 and must guarantee and give effect to the free expression of the will of the voters.”



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The Senate has 68 members, some elected and some appointed. It represents the counties and serves to protect their interests. The Senate participates in the law-making process, determines the allocation of national revenue among counties, and oversees state officers.

The Senate consists of:

- 47 elected in single member constituencies using first-past-the-post
- 16 women nominated by the political parties in proportion to their elected members of the Senate
- 2 members representing youth (one male, one female)
- 2 members representing people with disabilities (one male, one female)
- 1 speaker who is an ex officio member and, therefore, not elected.

County Assemblies and Executive

The country is divided into 47 counties. Each county has a county executive headed by a county governor elected directly by the people and a county assembly

elected with representatives from wards within the county.

The county assembly consists of:

- 1 member per ward in the county (numbers vary)
- 8 members nominated by political parties in proportion to seats received in the county elections to represent people with disabilities (four) and youth (four)

It is well-established that different electoral systems may produce a range of different political outcomes with varying impacts on the weight given to an individual's vote, the performance of types of political parties, and the degree to which certain groups (such as ethnicities, youth, and women) are represented. Kenya's mixed electoral system attempts to blend these goals with varying degrees of first-past-the-post, proportional representation, and nomination as well as the introduction of a higher threshold for winning the presidency.

ELECTION MANAGEMENT

An independent and impartial election management body that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in the electoral process.²⁰ It is also the responsibility of an election management body to take necessary steps to ensure that international human rights obligations apply to the entire electoral process. Best practice also indicates that an election management body should ensure accountable, efficient, and effective public administration as it relates to elections.²¹

The Independent Electoral and Boundaries Commission was established in the 2010 constitution as a successor for the Interim Independent Electoral Commission. It is composed of eight commissioners

Paul Kariuki Mumene



The Independent Electoral and Boundaries Commission, established by the 2010 constitution of Kenya, was charged with conducting the 2013 elections.

²⁰ UNHRC, General Comment 25, para. 20

²¹ Venice Commission, Code, Sec. II.3.1.c



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Paul Karuki Mumene



Kenyan voters in six elections on one day: president, members of Parliament, senators, county governors, county assembly representatives, and county women's representatives in Parliament.

and a chairman, with the objective of reforming the electoral process and restoring confidence in the country's electoral system. IEBC Chairman Ahmed Issack Hassan has a legal background and previously served on the Constitutional Review Commission of Kenya.

The commission has a professional secretariat that manages the day-to-day running of the organization, and it has nine directorates and 17 departments. Each directorate is headed by a director, while each department has a manager. The secretariat is composed of the chief electoral officer, two deputy chief electoral officers, nine directors, 17 managers, 17 regional election coordinators, and 210 constituency election coordinators.

The Carter Center recognized that the efficient management of the 2010 constitutional referendum and subsequent by-elections reinforced public confidence in the IEBC²² as well as raised expectations for the March 2013 elections. However, multiple problems induced by shortcomings in the procurement of essential election materials such as biometric voter registration machines and ballot paper printing cast a shadow on what was an otherwise high level of public

trust. Management of public expectations was an essential task for the IEBC in a context in which many Kenyan voters expected to vote electronically, further confirming the need for better voter education. The swift delivery of results in the 2010 referendum also established a precedent that was difficult for the commission to match in the 2013 elections that included six ballot papers and in which individual candidates had considerable political stakes. The

constitutional duty to organize six elections on the same day with the inherent complexity of counting and tallying the results swiftly put an unprecedented burden on the IEBC. Holding national and local elections separately would have reduced the IEBC's workload and allowed for more flexibility when the problem emerged.

Carter Center observers reported that preparations for the elections were appropriately timed in spite of the many procedural and logistical challenges faced by the IEBC. Training was in line with the electoral calendar, although specific training on electronic poll books had not been delivered to national trainers due to the delay in delivery of the equipment. Nonsensitive election materials largely were distributed on time, albeit sometimes unevenly, and IEBC personnel were reported to be reactive and swift in addressing problems.

²² Although the IEBC did not exist as such in 2010, the success of the referendum contributed in reinforcing trust in the election management body.



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Carter Center observers enjoyed full access to IEBC personnel in their area of responsibility, but access at national level was erratic and information given was often imprecise and confusing. Information coming out of the commission gave the impression of a lack of defined structural organization in which it was often difficult to identify the person in charge of specific electoral operations. The constant state of emergency that prevented the IEBC from meeting with observer groups at the technical level revealed a lack of planning and structural disorganization that needs to be addressed.

BOUNDARY DELIMITATION

The delimitation of electoral boundaries is a prerequisite to the principles of universal suffrage and equal representation.²³ Boundaries should be drawn in such a way that the principle of equal suffrage is preserved, such that every voter should have roughly equal voting power.²⁴ Skewed electoral boundaries that are highly disproportional in terms of population or other characteristics will tilt the weight of voters in some areas relative to others. There will be 290 seats for the National Assembly, and the population of each constituency shall, as nearly as possible, be equal.

Electoral boundaries in Kenya are delimited by the new administrative divisions of the country. For the presidential election, the country is a single constituency. The number of constituencies for the county assembly areas (wards) is determined by the Independent Electoral and Boundaries Commission through a delimitation process based on specified criteria and that involves public consultation. The constitution specifies the factors to consider in determining electoral areas in the country. These are:

- Density of population and, in particular, the need to ensure adequate representation of urban and sparsely populated rural areas
- Population trends: birth and death rates, rural–urban migration, potential for drastic population shifts such as those due to employment opportunities
- Means of communication: the presence of infrastructure to facilitate communication and movement of people and goods and its impact on accessibility of services to inhabitants
- Geographical features such as land and water masses, size of the area, and topographical features such as mountain ranges, rivers, lakes, and forests
- Existing electoral boundaries: retention of every constituency existing before the new constitution
- Existing patterns of human settlement: inhabitants per each electoral area
- Community interest: respect for shared interests, needs, values, or practices resulting from historical, cultural, religious, or socioeconomic ties

In Kenya, the average number of inhabitants per constituency is obtained by dividing the number of inhabitants in Kenya by the number of constituencies or wards into which Kenya is divided. Based on the most current national census (2009), the population quota is 38,610,097 (population) / 290 (wards) = 133,138,290.

Therefore, each constituency in Kenya should ideally have 133,138 inhabitants. Whereas the constitution stipulates that the number of inhabitants in each electoral area should be equal as much as is practically possible, it nevertheless allows for deviation from the population quota as follows:

- 40 percent above population quota for cities = 186,396.6 inhabitants
- 30 percent above population quota for other areas = 173,079.4 inhabitants

23 U.N., Human Rights and Elections: A Handbook on the Legal, Technical, and Human Rights Aspects of Elections, para. 103

24 UNHRC, General Comment 25, para. 21: “The principle of one person, one vote must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the vote of another....The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely.”



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- 30 percent below population quota for other areas = 93,196.6 inhabitants
- 40 percent below population quota for sparsely populated areas = 79,882.8 inhabitants

In the final boundary delimitation, 27 of 290 constituencies had fewer inhabitants than the stipulated threshold.

SUMMARY FINDINGS

Overall, Kenya largely fulfilled its obligations to ensure that a sound and comprehensive legal framework was in place for the 2013 elections. Although the Center is disappointed in several weaknesses, Kenya's constitutional and legislative reforms provided Kenyans with the basic framework for genuine democratic elections.

The Center was disappointed that the outgoing Parliament failed to pass political finance legislation to regulate campaign spending and strengthen transparency in the electoral process. The Center also notes that the absence of campaign finance legislation reduced transparency in campaign spending and likely gave significant advantage to the wealthiest candidates.

The Carter Center regrets that the Kenyan Parliament failed to pass specific legislation to implement the quota that provides that not more than two-thirds of the members of elective public offices should be of the same gender, as guaranteed by the constitution. Furthermore, the Supreme Court's advisory opinion to postpone the application of the

one-third quota of women in elective positions is a step backward from the constitutional commitment of Kenya to ensure equal eligibility and participate in formulation of government policy as stated in the Convention on the Elimination of All Forms of Discrimination Against Women.²⁵

Although it may be several electoral cycles before the specific influences of the electoral system become apparent, the framework appears to meet Kenya's basic international obligations.

Kenya has largely fulfilled its obligations to establish an independent and impartial election management body. The IEBC remains a relatively new institution, but it has now conducted two national electoral events with the 2010 constitutional referendum and the 2013 general elections. As an institution, this commission has established its presence as one of Kenya's key democratic institutions and will have to continue to reinforce the credibility it appears to have

earned through these two events. It deserves support from all quarters of Kenyan society and the international community.

The IEBC's willingness to innovate and introduce new technologies in the conduct of elections is admirable. It must be noted that while such initiatives (biometric voter registration and electronic transmission of results) have their place, they should be subject to the achievement of the commission's principal mission "to conduct free and fair elections and to institutionalize a sustainable electoral process."

Kenya's constitutional and legislative reforms provided Kenyans with the basic framework for genuine democratic elections.

²⁵ Ratified by the Republic of Kenya on March 9, 1984



PRE-ELECTION DEVELOPMENTS

VOTER REGISTRATION

Voter registration should be conducted in such a manner to allow for the broad participation of all eligible voters as well as the participation of all political parties and candidates.²⁶ An inclusive and transparent voter registration process lends credibility to the electoral process by verifying voters' eligibility and ensuring the right to vote as well as the right to be elected. To prepare for the 2013 elections, the voter registration exercise was conducted in Kenya from Nov. 19 to Dec. 18, 2012.

Kenya's voter registration process is outlined in the constitution (Art. 83), which provides that any administrative arrangement for the registration of voters must be designed to facilitate, and not deny, an eligible citizen the right to vote. The election act also provides detailed provisions on the registration of voters and the determination of questions concerning registration.²⁷

A total of 14,369,382 voters were registered in 24,573 registration centers. The number of voters who turned up to register at the centers ranged greatly—from two voters in St. Mary's nursery school in Matayos constituency and Korsen Centre in Wajir South constituency to a high of 29,517 voters in Umoja 1 Primary School in Embaksai West constituency. On Nov. 27, 2012, the government announced it would not register Kenyans from abroad due to logistical issues, only to later decide to limit the registration of Kenyan diaspora to the East African Community countries. After a 10-day exercise concluded on Dec. 25, 2012, marred by logistical problems, the IEBC managed to register 2,637 voters in East African Community countries.

Voter registration for the 2013 elections was marked by poor preparations on the part of the IEBC as a result of procurement challenges. The commission had opted for an electronic registration system

utilizing biometric voter registration. However, as a result of procurement controversies, the commission did not receive all the required biometric kits until Nov. 2, delaying the initiation of the registration process. This delay resulted in a need to amend the provisions of Section 6 of the Elections Act, which required the commission to finalize voter registration 90 days before the elections, reducing it to 60 days before the elections. In addition to the late start of the registration, the commission provided a very short period of 30 days in which registration was to be conducted, resulting in the registration of 14.3 million voters against an original target of 18 million.

Low turnout for voter registration in some areas was blamed on the general apathy from the violence of the previous elections, rumors about the effect of the biometric voter registration kits on the person (including risks of impotence), and on voters' ability to travel to areas of preferred registration.²⁸ In some regions, there was fear that the biometric features collected in the process would be used by the police and other security agencies for tracking individuals. In some regions such as Coast, there was fear of reprisal from the Mombasa Republic Council and other violent gangs. Counties such as Tana River County witnessed very low registration as a result of the displacement and violence that engulfed the area. Lack of identity cards was considered a key determinant of the low voter registration in some areas. This was a result of the delayed issuance of identity cards

²⁶ U.N., ICCPR, Art. 25

²⁷ Elections Act No. 24 of 2011, Part Two, Art. 4–12

²⁸ Voter registration was lowest in North Eastern province (bordering on Somalia, with only 30 percent) followed by uneven registration in Coast province (64 percent). Nairobi, Eastern, and Nyanza provinces all registered approximately 70 percent. Western, Central, and Rift Valley provinces reached approximately 65 percent. Nairobi surpassed the IEBC target with 106 percent registered.



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that are required for registration. Spirited attempts by Parliament to legalize voter registration using identification waiting cards for those youths who had applied but were yet to receive their identity cards did not materialize, as President Kibaki did not assent to the amendment.

Article 27 of the Elections Act calls for the Independent Electoral and Boundaries Commission to request that the public inspect the register of voters at places and times it specifies. Although the IEBC allowed voters to verify their individual data prior to elections, it never opened the entire register for public scrutiny, hence denying political parties the possibility to verify and sanction the integrity of the voter list.

While an elaborate legislative framework was adopted by Parliament, critical electoral regulations were watered down to meet operational requirements. These modifications were allowed by reducing the time frame to amend the electoral framework from six months to four months prior to the elections.²⁹

- The voter registration period was reduced from 60 days before the elections to 30 days, and the period for inspection of the voter register was reduced from 30 days to 14 days.³⁰
- Section 28 of the Elections Act was amended to reduce the deadline by which political parties must submit party membership lists to the registrar of political parties from 90 days before the elections to 60 days.
- The most controversial amendment was related to the minimum length of party membership required in order to be able to stand for election for the considered party. Section 34 of the Elections Act was modified to reduce the requirement from three months of party membership to just being a

member on the day of submission. This amendment allowed party-hopping right up until the day of candidate nominations, creating unnecessary confusion and undermining political stability.

Although technically speaking there were only a limited cases of missed deadlines, these kinds of amendments that were made solely to accommodate

delays in the system or for the political convenience of parties and candidates set a bad precedent, resulted in loopholes in the electoral process, and generated unnecessary pressure on IEBC operations.

Despite these aims, a late start — along with high levels of poverty and illiteracy — significantly impacted the efficiency of voter education programs.

VOTER EDUCATION

Comprehensive voter education is essential not only to inform the electorate of their rights but also to clarify policies ahead of election day.³¹ The right to voter education that is enshrined in the constitution is reinforced in the Elections Act that states, “The commission [IEBC] shall, in performing its duties under Article 88(4)(g) of the constitution establish mechanisms for the provision of continuous voter education and cause to be prepared a voter education curriculum.”³²

The IEBC’s own voter education literature notes that citizens have the right to accurate and timely information that will enable them to participate in the electoral process in an informed and confident manner. Moreover, the commission further recognizes the needs of special groups such as minorities, youth, marginalized people, and people with disabilities, including customized voter education and voter education materials.

²⁹ Election Amendment Act, Oct. 26, 2012

³⁰ Sections 5 and 6 of Elections Act

³¹ UNHRC, General Comment 25, para. 11

³² Elections Act No. 24 of 2011, Art. 40



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Paul Kariuki Mumene



Carter Center observers conferred with the presiding and deputy presiding officers at Mukarara Primary School in Dagoretti South constituency, Nairobi. Schools often served as polling stations.

The commission established a directorate of voter education and partnerships to manage the many hundreds of civil society groups interested in collaborating with the commission on voter education. It also developed standard voter education curriculum and training manuals and other materials to support these partnerships.

Among the stated goals of the voter education curriculum, the IEBC hoped to inform Kenyans about the political and electoral developments as provided under the 2010 constitution, including understanding the concept of devolved government and the new elective positions such as senator, governor, women's representative, and the county assembly representative. Further, the commission hoped to achieve the following:

- Inform participation in elections for these new offices and other provisions in the electoral process
- Provide relevant information to enable voters to understand the respective roles of the positions in governance

- Promote the desired participation of voters in the electoral process
- Introduce emergent technologies in the conduct of elections such as biometric voter registration and electronic tallying of results

Despite these aims, a late start—along with high levels of poverty and illiteracy—significantly impacted the efficiency of voter education programs in the pre-election period. After sources indicated that over half of the Kenyan electorate did not understand electoral processes, the IEBC launched a crash course voter education initiative just three weeks before the March 4 elections. While the commission worked closely with outside partners to develop voter education programs, Carter Center observers noted a lack of technical and financial support

from the commission in the implementation of these programs. Carter Center observers also reported on the lack of clarity of voter education materials, which were not well-developed for illiterate, semi-illiterate, or blind voters.

SUMMARY FINDINGS

The Independent Electoral and Boundaries Commission largely met its responsibilities to build an accurate and comprehensive vote register under significant time constraints, some of which were beyond its control. The missed deadlines and compressed time frames put significant pressure on the integrity of this process but do not appear to have damaged the confidence of the Kenyan electorate, who turned out to vote in large numbers. However, problems with the tender and procurement processes for the biometric voter registration technology revealed important challenges that must be met for the IEBC to maintain its independence and be able



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to manage the pressures from government, political leaders, donors, and international service providers. To strengthen voter confidence in the registration process, the biometric voter registration system should be used in conjunction with effective electronic voter identification at polling stations.

Despite apparent early weaknesses in the voter education effort of IEBC, high voter turnout and the number of valid votes cast reflect positively on the eventual impact of voter education programs

throughout the country.³³ The success of voter education was evident on election day when observers reported that election-day procedures were well-conducted by commission officials and that voters seemed knowledgeable about how to cast their ballot. However, for future elections voter education should begin in the immediate postelection period and continue throughout the electoral cycle. In addition, greater effort should be made to ensure that voter education materials are comprehensible for all voters.

³³ Further details of these election statistics can be found in Appendix H.



CANDIDATES, PARTIES, AND CAMPAIGNS

Equitable treatment of candidates and parties during elections as well as the maintenance of an open and transparent campaign environment is important to protecting the integrity of democratic elections and the right of every citizen to be elected.³⁴ Unreasonable restrictions on the right to participate include race, sex, religion, ethnic origin, language, and physical disability.³⁵

Kenya's constitution and electoral law enshrine the country's commitments to the rights to be a candidate for public office, to participate in the activities of a political party, and to campaign for a political party or cause. The constitution further guarantees a number of political rights, including the right to vote and be elected, freedom of speech and assembly, the right to form and join a political party, and the right to campaign for a political party or cause.³⁶ Therefore, it is important for campaign processes such as candidate nomination, party conduct, and campaign funding to be conducted in accordance with the country's legal framework.

Standing for Parliament requires aspirants to register as a voter; satisfy the educational, moral, and ethical requirements listed in the constitution and Elections Act; and be nominated by a political party or be an independent candidate supported by 1,000 signatures for the National Assembly and 2,000 for the Senate. The constitution also requires the candidate be a citizen of Kenya for the last five years, not be a state or public officer other than member of Parliament, not be a member of the IEBC in the last five years, not be a member of a county assembly, and not be of unsound mind or bankrupt. A sentence of more than six months of imprisonment or a misuse or abuse of state office is grounds for disqualification. The same criteria are required to stand for a presidential election, plus the obligation to be a citizen from birth.

PARTY PRIMARIES

During the nomination process, parties should respect the principles of genuine elections that guarantee the free expression of the will of the people.³⁷ The constitution and Political Parties Act each require that a political party undertakes and promotes a free and fair nomination process in accordance with the party's nomination and election rules.³⁸

The legal framework for party primaries is determined by the constitution³⁹ and the Elections Act.⁴⁰ Section 13 of the latter requires that nomination by political parties be undertaken at least 45 days before a general election and in accordance with the party's constitution and nomination rules. In their nomination process, political parties are required to "abide by the democratic principles of good governance [and] promote and practice democracy through regular, fair, and free elections within the party."⁴¹

The selection of candidates by political parties was publicly perceived as disorganized, marred with technical difficulties, and surrounded by persistent rumors of fraud and manipulation of results. The major political parties opted to have their nominations as close to the deadline as possible in order

34 U.N., ICCPR, Art. 25(b); AU, ACHPR, Arts. 2 and 13

35 U.N., ICCPR, Art. 2

36 Constitution of Kenya, Part Two, Rights and Fundamental Freedoms, Art. 38, Political Rights

37 ICCPR, Art. 25 and General Comment 25

38 Constitution, Art. 91 and Political Parties Act, Sections 6(2)(e) and 21(1)(b)

39 Arts. 99, 137, and 180

40 Sections 13 and 22–37

41 Art. 91(d) of the constitution and Sections 6.2.9(e) and 21.1(b) of the Political Parties Act



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to limit last-minute party-hopping. Moving the primaries closer to the IEBC deadline for submission of candidate lists only brought confusion to the candidate nomination process and pushed back the electoral calendar. Party nominations were held on diverse dates, but the larger political parties, including Orange Democratic Movement (ODM), The National Alliance (TNA), United Republican Party (URP), Wiper Democratic Movement (WDM), and the United Democratic Forum (UDF), set their nomination dates for Jan. 17, 2013, without realizing the logistical challenges this posed, such as the potential clash in polling venues. This resulted in all public primary schools being closed Jan. 17–18.

Nomination processes for most parties were considered deceptive, with many cases of fraud, rigging, and outright bias being reported. Ultimately, the decision to hold party nominations so close to the deadline resulted in the inability to conduct an all-inclusive nomination process that allowed for timely dispute resolution. Consequently, primary voting did not take place in a number of constituencies, and in those constituencies where voting did take place, vote counting was not completed on time.

Immediately following the primaries, 206 complaints were filed with the IEBC dispute resolution committee challenging the conduct and the results of the primaries. A total of 47 cases proceeded to the high court, challenging the decisions of the committee. In the meantime, the IEBC was running out of time to prepare ballot papers and other materials. While the high court rejected some of the cases, it directed the IEBC tribunal to reconvene and hear a number of complaints again. Some of the aggrieved candidates were still getting orders requiring the IEBC to include them in the ballots two weeks prior to elections, after the ballot papers had started to be

printed. For instance, in Kajiado constituency, an aspirant for the governor's position on The National Alliance ticket had his certificate revoked by the court, while the IEBC had already printed his name on the ballot papers. More than five candidates won cases and secured orders compelling the IEBC to include their names on the ballot papers with only two weeks until the elections. In Kuria East, the high court also reversed a case involving a contested

parliamentary seat, for which the IEBC had to destroy the already printed ballot papers. The last-minute primaries, combined with a lengthy judicial process, negatively impacted the electoral calendar and put an unnecessary operational pressure on the IEBC.

The primaries were also marked with late arrival of ballot materials, which forced some areas to vote on Jan. 18,

a day after the official primary date. Those ballot materials that did arrive were often inadequate and contained errors such as missing names or wrong names listed for different positions. Ballot papers for some parties ended up in different towns than where the voting was to take place. Examples include ODM ballots for Nyando and Muhoroni, which ended up in parts of Rift Valley like Eldoret.

Party officials were poorly trained, some of them exhibiting incompetence and tallying malpractices. Parties were also not clear on what rules to use regarding those eligible to cast a vote in the nominations, resulting in nonmembers voting in parties with which they had no affiliation and, in some cases, voting in multiple party nominations. Allegations were also made regarding votes that were not counted at the end of the process as well as cases where losers after the count were declared winners and vice versa. Following this failure on the part of the political parties, the chairman of the ODM elections board pointed out the need to involve the IEBC in

The decision to hold party nominations so close to the deadline resulted in the inability to conduct an all-inclusive nomination process.



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conducting party primaries in the future. Despite the fact that the Elections Act gives parties the opportunity to consult the services of the IEBC, no party requested assistance from the commission.

Furthermore, the political party primaries failed to establish intraparty democracy. In some cases, winners succeeded through a show of might within political parties where the strongest ended up as winners and allies were rewarded without competition through direct nominations rules entrenched in party constitutions. Carter Center observers witnessed demonstrations in many places throughout the country as disgruntled supporters of defeated aspirants took to the streets, which in some cases resulted in violence.

After the conclusion of the primaries, occurrences of party-hopping were still witnessed in contravention of the Elections Act and the Political Parties Act. While some aspirants defected on nomination day, meeting the technical requirement of the law, some prominent politicians defected to other parties outside the required 45-day time frame. A clear example of this includes a candidate who defected to the National Agenda Party after an acrimonious nomination process in the Orange Democratic Movement. This candidate held a press conference on Jan. 27, 2013, at which time he received a nomination certificate from party officials that was backdated to Jan. 18. However, as late as Jan. 21, he was still utilizing the internal dispute resolution mechanism within ODM when the party disqualified his nomination.

The Carter Center observed several occurrences of candidates changing parties after the deadline and backdating their nomination certificates.

The shift by the IEBC of the nomination date from Jan. 18 to Jan. 21 was a breach of the electoral law. Although the IEBC denied shifting this deadline, the cumulative effect was a clear violation of the

provisions of the law requiring all political parties to present the list of nominated candidates 45 days prior to the elections, that is, on Jan. 18. On Jan. 17, the IEBC issued a notice to all parties requiring the political parties to present their list of nominated candidates by Jan. 21.

This shift also had negative effects on the dispute resolution process from the party primaries by extending its resolution. As late as Feb. 8, returning officers in some constituencies were still receiving nomination papers for candidates in spite of the Jan. 28 deadline set by the IEBC operational calendar. The late conclusion of the dispute resolutions from the primaries also strained the IEBC operations calendar. As a result of the late conclusion of the final candidate list, the official publication of the names of candidates and the forwarding of the details of candidates to the ballot paper printing companies were equally delayed.

PRIMARIES DISPUTE RESOLUTION MECHANISM

All disputes arising from the party nominations were to be lodged, heard, and concluded through political party dispute resolution mechanisms as provided in their respective party constitutions from Jan. 19–21. Aggrieved contestants had the option to lodge a complaint with the IEBC after the internal party process before 5 p.m. on Jan. 22. The IEBC was mandated to settle electoral disputes, including disputes relating to or arising from nominations but excluding election petitions and disputes subsequent to the declaration of election results. Under Section 74 of the Elections Act, it is required to resolve these disputes within seven days or before the nomination or election date.

Table 2

Cases Filed	No. of Cases	Dismissed	Allowed	Withdrawn
High Court	74	43	17	10
IEBC Tribunal	260	160	36	8



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Table 3

Coalition	Member Parties
CORD Coalition	Orange Democratic Movement Party
	Wiper Democratic Movement
	Forum for the Restoration of Democracy in Kenya Party (FORD Kenya)
	Eleven other small parties
Jubilee Alliance	The National Alliance Party
	United Republican Party
	Republican Congress
	National Alliance of Rainbow Coalition
Amani Coalition	United Democratic Forum
	New-Ford Kenya
	Kenyan African National Union
EAGLE Coalition	Kenya National Congress
	Party of Action

The IEBC handled 260 cases regarding disputes from the party primaries; 160 cases were dismissed after being heard and 10 were withdrawn by the party instituting it, while 36 were allowed by the tribunal. From parties and individuals disgruntled by the IEBC's decision, The Carter Center observed 74 petitions and judicial reviews instituted at the high court. Out of these, 43 were dismissed for lacking merit amongst other reasons, 10 were marked as withdrawn, and the court allowed 17 petitions. Four were referred back to the IEBC.

Most of the petitions and judicial reviews filed at the high court were dismissed for either lack of merit or lack of jurisdiction. The high court had very little time to deliberate on the petitions due to their volume as well as the time constraints. Because the primaries were held so close to the elections, the court was pressed for time to deliberate the cases despite the mechanisms designed to prioritize the petitions put in place by the judicial working committee. Some of the court's decisions were overruled, such as the decision of the Political Parties Dispute Tribunal to accept petitions after the ballot papers had already been printed. The rulings on other

petitions were delayed until after the elections.

Significantly, a petition was filed to challenge the independence of international observation missions on the basis of alleged partisanship, citing the declarations made by the U.S. undersecretary of state for Africa, Johnnie Carson, and British High Commissioner Christian Turner. This petition was dismissed for a lack of merits.

POLITICAL PARTIES, COALITIONS, AND CANDIDATES

A total of 59 political parties and eight coalitions registered with the office of the Registrar of Political Parties for the 2013 elections. The office was created by the Political Parties Act of 2007 and is responsible for the registration of political parties as well as maintaining the list of registered political parties. The main parties included Orange Democratic Movement (ODM), The National Alliance (TNA), United Republican Party (URP), Wiper Democratic Movement (WDM), NARC Kenya, United Democratic Forum, and Forum for the Restoration of Democracy (FORD Kenya). These political parties crystallized into two major coalitions, the Coalition



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for Reform and Democracy (CORD) and the Jubilee Alliance.

The Orange Democratic Movement and The National Alliance had the highest number of candidates, with a total of 1,394 and 1,271 registered candidates, respectively. Only 198 candidates ran independently.

CRITERIA TO STAND FOR ELECTIONS

According to the constitution, in order to be eligible to run for president, a candidate must be a citizen by birth, have the qualifications to be a member of Parliament, be nominated by a political party or be an independent candidate, be nominated by 2,000 or more voters from at least 24 counties, hold a university degree from a university recognized in Kenya, and not have any allegiance to a foreign state.

To be eligible as member of Parliament, a candidate must be a registered voter, have a post-secondary school qualification, satisfy moral and ethical requirements prescribed by the constitution or by an act of Parliament, and be nominated by a political party or be an independent candidate supported by at least 1,000 registered voters in the constituency for the National Assembly or 2,000 registered voters for county elections. In addition, the candidate should not be a state officer or other public officer other than a member of Parliament, he/she should have been a citizen of Kenya for at least 10 years before the elections, and should not have held office as a member of the IEBC in the past five years. The candidate should not be a member of a county assembly, should be of sound mind, not be bankrupt, and not have been found to have misused or abused a state or public office. Finally, the candidate should not be subject to a prison sentence of at least six months at the date of his/her registration as a candidate or at the date of the election.

PARTICIPATION OF WOMEN

Kenya's international obligations state that women shall enjoy equal rights to men and that in some

cases a state may take special temporary measures to achieve de facto equality for women.⁴² Political parties should also embrace the principle of equal opportunity for female candidates.⁴³

The Supreme Court's opinion against the immediate implementation of the constitutional provision to achieve one-third women's representation and the outgoing Parliament's failure to reform the electoral act appear to have contributed to the continued low number of women receiving party nominations to stand in the elections.

Furthermore, political parties declined to adopt specific policies to enhance women's participation in the party primary candidate nomination process. As a result, the number of women nominated by political parties was significantly lower than their male counterparts.

- One presidential candidate out of eight was a woman.
- 152 women were nominated among 2,089 candidates for the 290 directly elected National Assembly seats.
- 16 women were nominated among the 244 candidates for the 47 directly elected Senate seats.
- Seven women were nominated among the 237 candidates running for the 47 positions of county governor.
- 697 women were nominated among the 9,603 candidates for 1,450 county assembly seats.

The figures for women's nominations (fewer than 900) are in stark contrast to the total of 12,491 candidates registered to contest the 1,882 seats available in these elections.

⁴² U.N., ICCPR, Art. 3 and U.N., Convention on the Elimination of All Forms of Discrimination Against Women, Art. 3

⁴³ CEDAW Committee, General Recommendation 23, para. 22



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Table 4

Presidential Candidate	Pre-election Position	Running Mate	Coalition	Party
Uhuru Kenyatta	Deputy Prime Minister of the Republic of Kenya	William Ruto	Jubilee Alliance	TNA
Raila Odinga	Prime Minister of Kenya	Kalonzo Musyoka	CORD	ODM
Peter Kenneth	MP, Gatanga Constituency	Ronald Osumba	EAGLE Coalition	KNC
Paul Muite	Former MP for Kikuyu Constituency	Shem Ochuodho	–	Safina
Musalia Mudavadi	Deputy Prime Minister of the Republic of Kenya	Jeremiah Ngayu Kioni	Amani Coalition	UDF
Mohammed Abduba Dida	Former High School Teacher	Joshua Odongo	–	ARC
Martha Karua	Member of Parliament, Gichugu Constituency	Augustine Lotodo	–	NARC-Kenya
James ole Kiyiapi	Former Permanent Secretary, Education Ministry	Winnie Kaburu	–	RBK

The single greatest number of women candidates was in the women's-only election for the 47 reserved seats in the National Assembly, with 403 candidates.

The outgoing Parliament elected in 2007 had Kenya's highest-ever number of women representation, yet they formed only about 10 percent of members. Though further study is required, it is plausible that the establishment of 47 reserved seats for women in the National Assembly tended to encourage women to seek only those seats and not contest open seats in the party primaries. Equally plausible, males dominant in all political parties dissuaded women (with several reports of intimidation) from aspiring for the open nominations.

KEY PRESIDENTIAL CANDIDATES

Both CORD and the Jubilee Alliance featured a collection of high-profile national politicians and ethnic blocks. In contrast to the pattern of coalition formation during the last elections, the Jubilee Alliance brought together senior Kikuyu and Kalenjin leaders, while the opposition united Luo, Kamba, and Luhya figures.

The IEBC cleared eight presidential tickets but among these political leaders, two key personalities stood out.

Uhuru Kenyatta

Uhuru Kenyatta is the son of Kenya's first president, Jomo Kenyatta. He derived considerable wealth from land and businesses he inherited from his late father, and his investments now total into hundreds of millions of U.S. dollars.

He came into the political limelight in 1997 when then President Daniel Moi called on him as his successor. Defeated in the 2002 elections, he supported incumbent President Mwai Kibaki's successful re-election in 2007. He faces accusations that he financed the Mungiki onslaught on the Luo people—one of the charges he is now facing at the International Criminal Court (ICC).

Kenyatta was a deputy prime minister in President Kibaki's coalition government, and subsequently, he formed the Jubilee Alliance with his eventual running mate William Ruto (also indicted by the ICC for his alleged role in postelection violence in 2007–2008).



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Raila Odinga

Raila Odinga is the son of another Kenya independence leader, Oginga Odinga. The elder Odinga was Kenya's first vice president and later opposition leader until his death in 1994. Considered one of Kenya's most charismatic and master mobilizers, Raila Odinga was detained in 1982 by Moi for his involvement in an attempted coup, and he spent six years behind bars. He briefly sought asylum in Norway in 1991, claiming that there was an attempt on his life.

He returned to Kenya in 1992 to join the Forum for the Restoration of Democracy (FORD), then still led by his father. He then left the party to form the National Democratic Party and finished third in the 1997 presidential election. In 2002, he joined forces with fellow opposition leader Mwai Kibaki, with whom he had a falling out. In 2007, he lost to Kibaki in what many claimed was a rigged election, bolstered by the fact that Odinga's party won a landslide in the parliamentary elections.

Feb. 28, 2008, under the auspices of the African Union Panel of Eminent Personalities chaired by Kofi Annan, the government/Party of National Unity and Odinga's Orange Democratic Movement signed a coalition agreement to end the political crisis. In the resulting power-sharing agreement, Raila Odinga became prime minister. In late 2012, Odinga's party formed an alliance with Kalonzo Musyoka's Wiper Democratic Movement to form CORD. At the time, Musyoka was the incumbent vice president of Kenya.

Other presidential contenders include Musalia Mudavadi, a former deputy prime minister to Odinga; Martha Karua, a one-time justice and constitutional affairs minister who fell out with Kibaki; and Peter Kenneth. However, these and other presidential candidates were not seen as likely to mount any significant challenge to the two front-runners.

CAMPAIGN ENVIRONMENT

The right of individuals to participate in public affairs, including through the establishment of and free association with political parties and participation

in campaign activities, is an international obligation and a fundamental electoral right.⁴⁴ Equal treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment is important to protecting the integrity of the democratic election process.⁴⁵ The constitution of Kenya also guarantees freedom of citizens to exercise their political rights under Article 38 and guarantees free and fair elections, free from violence, intimidation, improper influence, or corruption and conducted by an independent body. Chapter VII of the constitution also guarantees the representation of the people and includes general principles for the electoral system, legislation on elections, voter registration, candidates for election and political parties to comply with a code of conduct, and electoral disputes, among other issues.

The 2013 campaign environment was overshadowed by the dominant concern to avoid the animosity and clashes that followed the 2007 elections. In order to prevent potential overlap in campaigning activities, candidates were asked to submit their plans to the IEBC's constituency election coordinators. In most cases this measure contributed to peaceful campaign activities and helped to avoid campaign activities crossing one another's paths. However, not all the candidates adhered to this mechanism. The IEBC also appointed one campaign monitor in each county to ensure candidates adhered to the campaign rules. While the IEBC should be given credit for establishing such a monitoring mechanism, the effectiveness of the monitors was compromised by poor technical equipment.

In the beginning of the campaign period, the political message being delivered to the electorate

44 ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7(b); UNHRC, General Comment 25, para. 2

45 AU, ACHPR, Art.10(1); IPU, Declaration on Criteria for Free and Fair Elections, Art. 3(3)



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mostly relied on generic slogans such as “reviving the country.” However, in time the candidates developed more diversified political platforms referring to specific local problems. Some occurrences of hate speech were reported on vernacular radio stations and in some campaign speeches made by candidates in local languages to some audiences. Overall, however, The Carter Center found that the majority of Kenyan citizens were committed to a peaceful electoral process, which they reaffirmed on numerous occasions during the campaign. The Center also welcomed the organization of two presidential debates in which all eight candidates exchanged views on live television and 33 radio stations across the country. The debates were viewed widely, informed the nation, and gave an opportunity for citizens to see and hear the candidates interact with one another. The relatively open debate style of the format allowed voters to hear different views on issues affecting their daily lives.

Despite the fact that the election regulations provide that the campaigning period should start no sooner than 21 days prior to election day, the political jockeying of potential presidential candidates pairs in late 2012 effectively opened the campaigns. Most campaign activities began well before the official start and, in most cases, right after the candidate nomination period at the end of January 2013. Nevertheless, it needs to be noted that the lack of a clear and respected campaigning calendar did not contribute to any distortion of a peaceful campaigning atmosphere during the entire period. Most campaign activities were orderly, with only minor incidents related to the destruction of campaign materials being reported. In most cases, campaigning activities were limited to printed materials, including posters, billboards, and leaflets. Other campaign activities observed by The Carter Center included meetings with voters, convoys of vehicles, and agitating via Short Message Service (SMS, or text message). Campaign rallies were less frequent and of small to medium size. Larger political meetings were reserved mostly for presidential candidates only.

The Carter Center also welcomed the organization of a public rally at Uhuru Park in Nairobi on Feb. 25,

when all presidential candidates pledged their commitment to peaceful elections in front of a large crowd of supporters. The Center's observers reported isolated cases of vandalism, such as destruction of campaign posters. Although the final campaign rallies drew numerous supporters, no clashes were observed. Kenyans were able to assemble freely while parties and candidates conveyed their message to potential voters. The campaign period ended peacefully at midnight on March 2.

CAMPAIGN FINANCE

Clear and fair regulation of campaign finance is an important means for the state to balance the rights of citizens to participate in public affairs and the need for equity among candidates and parties.⁴⁶ State practice indicates that political parties should be assured that they will be able to compete with each other on an equal basis before the law and all political contestants should have an equal period of time in which to campaign.

Pursuant to Article 88 of the constitution, the IEBC is responsible for the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.⁴⁷ The absence of IEBC regulation of campaign finance deepened the lack of control over campaign spending, allowing for an unfair advantage for rich candidates. A new political finance regime could have also bridged the funding gap among political parties, curbed corruption, limited the influence of special interests and the impact of money on the elections, and forced parties to be more accountable to their members.

46 Free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is considered necessary to give effect to these rights. UNHRC, General Comment 25, para. 25

47 Constitution of Kenya, Art. 88(4)(i): “The Commission is responsible for...the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election.”



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The absence of campaign finance regulation, especially in the presidential race, was exacerbated by the absence of a fully enforced campaign period that penalized candidates and parties who lacked the resources to run a long and expensive pre-campaign. Disparities in financial resources continued to prevent a level playing field through the end of the campaign. While the wealthiest candidates were campaigning using helicopters, others struggled to afford nationwide transportation, billboards, media space, and televised advertising.

Party affiliation gave candidates access to the party's resources, thereby increasing their chance to be elected, especially in areas considered as parties' strongholds. This feature of much of Kenya's political geography explains why many party primaries were so strongly contested—and some outcomes disputed—with last-minute party-hopping that offered losing candidates in one party a last chance with another.

Parties were also massively financed by their highest profile individuals. Although individual contribution to party finance was limited to 5 percent of the total party budget, party officials often admitted that the two main presidential contesters were the main contributors to their party. In the existing system, a candidate with money and/or the support of a party has a significant comparative advantage over an independent candidate with no money.

Several Kenyan organizations have reported on the particular disadvantages facing women candidates, who frequently lacked the resources of male contenders and who often did not receive help from their parties. Carter Center observers reported that candidates for women's seats particularly suffered from the lack of party funding, especially considering they had to campaign in the much larger countywide constituencies.⁴⁸

PARTICIPATION OF WOMEN, MINORITIES, AND MARGINALIZED GROUPS

Everyone should be able to enjoy their rights, free from discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status at any time.⁴⁹ Special, temporary measures for advancing ethnic minorities or groups that have suffered past discrimination may also be taken.⁵⁰

The diversity of ethnic groups in Kenya highlights in particular the importance of these rights, and the constitution not only enshrines these rights but directs the state to take active measures to promote the participation of all Kenyans.⁵¹ Kenya's electoral system provided for a limited number of reserved seats for the representation of youth and people with disabilities in the National Assembly, Senate, and county assemblies.

Although Kenya's constitution explicitly provides for measures to enhance women's participation in electoral politics, these rights require additional legislative measures to be fully effected. In light of the limited legal framework providing for a solid set of rules to enhance women's participation in politics, The Carter Center observed very few women competing for elective positions. While the adoption

The Carter Center found the promotion of women's representation in elective positions to be wanting.

48 Women's seats in the National Assembly were disputed in 47 counties, while other seats were divided in 290 smaller constituencies.

49 U.N., ICCPR, Art. 25; AU, ACHPR, Art. 2

50 U.N., ICERD, Art. 1

51 See, for example, Constitution of Kenya, Art 27(6): "To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programs and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination."



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of reserved seats for women ensured an immediate representation of women in Parliament, the reserved seats for women may have contributed to a relative segregation of female candidates and prevented them from standing as candidates for any other seat in Parliament—rather than empowering women to fully engage in the political process as candidates and elected representatives.

In spite of numerous dispositions aimed at ensuring better representation of women in public office, The Carter Center found the promotion of women's representation in elective positions to be wanting. The Political Parties Act alone contains two significant articles focusing on gender equality in both party and government composition. However, their existence failed to translate to higher political representation or participation by female candidates.⁵²

THE MEDIA

International obligations related to the media and elections include freedom of expression and opinion and the right to seek, receive, and impart information through a range of media.⁵³ Kenya's constitution guarantees media freedom and prohibits the state from interference in those rights.⁵⁴ While The Carter Center did not conduct comprehensive media monitoring, it offers the following observations on the overall media framework.

The Carter Center observed very intense media coverage of the electoral campaign, mainly concentrated around the two parties that were considered front-runners by pollsters. The attention given to the two main presidential contenders, CORD and Jubilee, and their financial capacity to occupy the media did not create a level playing field for the other candidates.

The numerous public opinion polls reported during the campaign prepared the Kenyan people for a potential runoff and a very close race, inciting the media to focus even more on the two main presidential candidates. Throughout the campaign, the national media focused on the presidential elections, leaving aside the crucial competition for national

and local assemblies, which will play a major role in the country's future with the implementation of the new devolution system. The Center finds that more attention should have been given to the five other elections that took place on March 4.

The Center welcomes the new guidelines for elections coverage put in place a year before the general elections. The guidelines were signed by more than 15 media houses and institutions that committed themselves to providing quality and constructive coverage of the elections. Media throughout the election period were focused on spreading peace messages, often to the detriment of the news. The media played an important role in spreading violence in 2008, which created a sense of guilt inside the profession. As a result, media houses were overly cautious in their coverage, focusing on the prevention of violence to such an extent that they censored themselves while reporting news. Incidents and irregularities were often softened in the media due to fear of strong reaction from the public and of being labeled as inflammatory. Therefore, most irregularities that should have been reported in the media were heard for the first time in the Supreme Court.

The media should be given credit for engaging in voter education, especially the radio stations, which called on members of the public to register and to vote in order to exercise their constitutional rights and elect credible leaders. Nevertheless, the media could also be criticized for placing too much emphasis on the presidential candidates at the expense of candidates for other elective positions. The Carter Center regretted that the focus of international media on the risks of violence did not reflect the peaceful messages being delivered by candidates, political parties, and all stakeholders.

⁵² Art 7.2(c), Art 25.2(b) of the Political Parties Act. Art.91(f), Art.100 of the constitution

⁵³ U.N., ICCPR, Art. 19(2); United Nations Convention Against Corruption, Arts. 10(a) and 13(b); AU, Principles on Freedom of Expression in Africa, Art. 6

⁵⁴ Constitution of Kenya, Art. 34(1)



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Rupiah Banda, former president of Zambia, and Dr. David Pottie speak with an Electoral Observation Group observer before the polls opened.

constituency and the League of Pastoralist Women in Isiolo, both of which conducted the only voter education programs available in those areas.

The largest civil society organization to observe the elections was the Elections Observation Group (ELOG), which deployed 580 constituency supervisors and over 7,000 observers to all 290 constituencies. Due to ELOG's extensive coverage throughout the country, the group was able to provide an independent assessment of the electoral process and verify the results announced by the IEBC. In particular, ELOG's parallel vote tabulation not only confirmed the IEBC's tally, it

helped restore public confidence in the commission after technological failures and a lack of transparency created skepticism surrounding the tabulation process.⁵⁷ Various electoral issues were reported by other civil society organizations, including the National Gender and Equality Commission, which assessed the participation of women and youth in the elections, lending further credibility to the elections.

CIVIL SOCIETY

All people have the right to participate in the public affairs of their country.⁵⁵ Not only does this right include the right to vote and to be elected, it also includes the right of citizens to participate in nongovernmental organizations and the ability to participate in domestic (or citizen) election observation groups.⁵⁶ In the conduct of this activity, citizens and civil society organizations must also be able to enjoy their other rights and freedoms such as freedom of opinion and expression, movement, association, and assembly; access to information; equality and absence of discrimination; and the right to an effective remedy.

Civil society organizations played an active role throughout the electoral process. More than 50 domestic organizations were accredited by the IEBC to observe the general elections. The responsibility taken on by these organizations in terms of voter education and peace initiatives greatly assisted the IEBC, which may not have been able to meet the need for voter education otherwise.

Carter Center observers based in Eastern province, for example, commended Community-based Development Services in Chuka Igambango'ombe

SUMMARY FINDINGS

Overall, Kenya partially fulfilled the large set of international obligations that support the numerous political rights of its citizens, including the right to participate in public affairs, freedom of association, freedom from discrimination, and guarantees of the

⁵⁵ U.N., ICCPR, Art. 25; AU, ACHPR, Art. 13

⁵⁶ U.N., CEDAW, Art. 7. Further, women, as well as men, have the right to participate in the public affairs of their country.

⁵⁷ Over 1,500 ELOG observers were tasked with conducting parallel vote tabulations at sample polling stations on election day.



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security of the person as they relate to candidates and political campaigns.

Kenya made great strides to keep the 2013 election campaign peaceful and afford all candidates the opportunity to share their message with voters. Party primaries reflected an obvious and strong interest on the part of many Kenyans in public service, noting also the many personal advantages that past elected members have often accrued for themselves, including very highly paid members of Parliament. The reported disorder in the conduct of many of those primaries indicates that political parties need to do a much better job in preparing for the primaries and in ensuring that supporters of various aspirants avoid intimidation before the primary and retribution afterward.

The IEBC's commitment to implement dispute resolution at this level appears to have been an effective intervention to keep the early period of the campaign calm. With a political party code of conduct, a strong but comparatively disciplined Kenya police service presence, and increased public confidence in the judiciary, it appears that many of the institutional building blocks that can help to shape future political behavior are in place and gaining traction. The effectiveness of publicized presidential debates could serve as a model for future public debates for other elective offices.

However, the Center also observed the effects of highly differential levels of wealth and resources available to candidates, especially for the presidency, and particularly for all women candidates. More effective legislative, institutional, and civil society support for equitable campaign finance regulation of various means—as well as making the country's commitment to ensuring at least one-third of elected positions are held by women a reality—represent two areas where work needs to be done.

Reserved seats to ensure the representation of youth and people with disabilities are an important demonstration of Kenya's willingness to take steps to make that access a reality for more of its citizens. However, important areas of further reform deserve attention, notably improved regulation and/or oversight of party primaries to promote internal party democracy and ensure fair and equitable opportunity for aspirants to seek their party's nomination; political and campaign finance regulation to provide a more level playing field for aspirants and parties, especially women, youth, and minority candidates; and assurance that all candidates and parties are treated equitably and able to enjoy their right to security and freedom from discrimination, harassment, and intimidation.



ELECTION DAY, VOTING, AND VOTE COUNTING

The quality of voting operations on election day is crucial to determining how closely an election adheres to a country's democratic obligations.⁵⁸ A core obligation under international law is that elections shall be held by secret ballot, which is recognized as a means of ensuring that the will of the people is expressed freely and that a cast ballot cannot be connected with a voter to avoid intimidation and political retribution. Kenya appears to have largely met this important obligation in the March 4 elections.

VOTING MATERIALS

The Independent Electoral and Boundaries Commission elaborated voting and counting procedures in a number of official manuals. Each polling station was to be equipped with the following materials by the IEBC in order to conduct elections:

- An electronic and a hard copy of the principal register of voters (or the part containing the names of the voters entitled to vote at that particular polling station)
- Six transparent color-coded ballot boxes that identified the respective elective positions
- Sufficient ballot papers color-coded to correspond with those of the respective ballot boxes for each elective position
- Stamp for the official mark of the IEBC on ballot papers
- Indelible ink for marking voters' fingers, indicating they have voted
- IEBC seals
- A sufficient number of enclosed polling booths in which voters could mark their votes in privacy
- Other materials



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A woman's finger is inked to indicate she had cast her ballots.

POLLING STATION LOCATIONS

The IEBC is allowed by law to use any room or rooms in any public schools or any other facilities belonging to public bodies as polling stations. When public facilities are unavailable, inadequate, or unsuitable, the IEBC may use a private facility as a polling station, with prior agreement from the owner.

Although there were numerous polling stations throughout the country, there was only one tallying center per constituency, one tallying center per county, and one tallying center at the national level.

To maintain order at the polling station, protect the secrecy of the vote, and monitor the electoral process, only the following people were allowed in a polling station: election officials, interpreters, security officers, voters, accredited election observers, media, people accompanying assisted voters, and candidates or their election agents.

Approximately 32,400 polling stations showed a significant variance in the number of voters per polling station. Some 50 percent of polling stations had more than 400 voters, and many large polling

⁵⁸ U.N., ICCPR, Art. 25; ACHPR, Art. 23; U.N., UDHR, Art. 21



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centers were established, often as a single polling station with many “streams.” Centers that registered more than 800 voters divided them into equal streams, with no stream to exceed 1,000 registered voters. These arrangements were necessitated by the pressure on the electoral calendar, the overlap of the late completion of voter registration, and the IEBC’s need to finalize the number of polling stations.

VOTING PROCESS

Carter Center observers visited a total of 265 polling stations, where they observed poll opening, polling, closing, and counting. Overall, they reported strong voter turnout and polling station staff that generally performed according to procedures. Staff received a rating of good or very good in more than 90 percent of stations visited. The presence of Carter Center observers was welcomed nearly everywhere, with the exception of one case in Trans Nzoia where they were not allowed to observe the polls.

Opening of Polling Stations

All polling stations were obligated by law to commence voting at 6 a.m. and close at 5 p.m. Prior to allowing the first voters into the polling station, the ballot boxes were to be shown to all those present

to ensure they were empty. The IEBC and party agents then placed seals on the boxes. Election agents could also inspect the ballot papers to note their respective serial numbers.

Polling operations throughout the day were performed in a largely peaceful atmosphere with the exception of two occurrences of violence with regrettable deaths in the Coast region, which forced the relocation of a constituency tally center. On a few occasions Carter Center observers reported cases of intimidation of voters by unidentified individuals and parties’ supporters, for instance in Chalani Primary School, Kilifi South. The observers also witnessed cases of undue assistance to the voters. One incident of money being distributed to the queuing voters was reported from Nyeri region.

Due to the high number of voters per polling station, Kenyans withstood long lines from early morning through the heat of the day, and many voters waited six or more hours to vote. Polls that opened late remained open for up to 11 hours, and all polling stations were to allow the last voter in line at the time of closing to cast their ballot. Carter Center observers reported that 75 percent of polling station openings occurred by 6:30 a.m. Carter Center observers further found that 95 percent of polling stations visited had all necessary materials by the time polling stations opened at 6 a.m.⁵⁹

Nearly all polling station areas were free from campaign materials, and the appropriate number of security personnel was on hand and behaved accordingly. In a few instances, however, security personnel were confronted with a high turnout of voters, which resulted in some tensions at the polling stations. On one occasion in Rongai, Carter Center observers reported the lack of any security personnel present at the polling station.

The March 4 elections were the first to use the electronic voter register, requiring each polling

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Polling stations with large numbers of voters asked citizens to line up in “streams.”

⁵⁹ However, on one occasion in Nairobi, Carter Center observers reported an insufficient quantity of ballot papers supplied to a polling station, an issue that also concerned results tally forms 34 and 35 at the same polling station.



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station to have a functioning electronic voter identification device to conduct biometric voter identification. However, Carter Center observers found that while polling workers were adequately trained on how to use the machines, many devices malfunctioned or were not provided with an adequate power supply to maintain function for all 11 hours of voting. In 41 percent of polling stations visited by Center observers, these electronic devices were not operating. This failure resulted in some confusion regarding the voter list that was further compounded by some 36,236 voters for whom biometric data was not captured during registration. Therefore, some data allegedly was included in the paper registry but not in the biometric system.

As a backup plan to the electronic system, polling stations were issued printed voter lists with photographs. Polling-station staff quickly used this paper register to keep the voting process moving. While technical difficulties in polling stations significantly slowed the voting process in certain areas, voting was able to continue and voters were not reported to be disenfranchised.

Official Voting Procedure

When voters entered a polling station, polling officials were to check the voter's ID or passport used at registration against the voter register and ensure that the voter's hands were free from indelible ink, to ensure that no voter attempted to vote more than once.

Once confirmed as a registered voter, a clerk issued ballot papers in pairs to the voter. Each time, the voter returned from the ballot booth to collect the next pair after depositing his/her ballots in the ballot box. Polling officials were to issue presidential and National Assembly ballots first, county assembly and senator ballots second, and county women's representative and county governor ballots third.

Voters who were disabled or could not read and write were able to request assistance and were free to choose who assisted them, provided the person was over 18 years old. The assistant was required to take an oath of secrecy before the presiding officer

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IEBC officials worked to recover the biometric voter registration system, but after it failed they deferred to paper voter registers.

and then escort the voter to the ballot booth to help mark the ballot papers in accordance with the voter's instructions. No agent, observer, or election official was allowed inside the polling booth.

The designated person could only assist one voter during the entire polling process, and in the absence of an assistant, the presiding officer could do so. No election agent could assist a voter to vote under any circumstance. In the event a voter spoiled a ballot paper (e.g. by marking inappropriately, tearing, etc), he/she could request a replacement ballot paper from the presiding officer who then immediately canceled the paper and placed it aside.

If a polling station ran out of ballot papers, it was the duty of the presiding officer to request extra ballot papers from an immediate neighboring polling station within the electoral area and to record the number of received ballot papers in the polling-station diary.

Carter Center observers noted that in 20 percent of locations visited, the layout of the polling station and placement of the voting booth, particularly those in stations with limited space, could have compromised the secrecy of the vote. Furthermore, most observers commented on assisted voting that compromised the secrecy of the ballot in some instances. The cases witnessed concerned more than one person assisting a voter or the same person assisting more than one



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voter. In some of these instances, party agents were filling out ballot papers for voters.

The number of the voters who needed assistance due to confusion proved to be another important issue. In particular, elderly and illiterate voters were confused about the complexity of the procedures, particularly about choosing the proper ballot boxes for casting their ballots. Other than these cases, Carter Center observers did not report serious concerns about violations of ballot secrecy or incidents of intimidation or concern among voters.

Political parties and independent candidates' agents from more than one party were present at almost all of the polling stations visited. However, it was observed that at some polling stations the number of agents from one party was more than one. Sometimes party agents did not follow the code of conduct and disrupted voting, as was reported in Meru and Embu.

Domestic observers were prevalent at 60 percent of polling stations. Nevertheless, very few polling station complaints were officially submitted. The Center commends the impressive work of the Elections Observation Group, which released two rolling assessments on election day and implemented a parallel voting tabulation exercise that reflected the final results within the statistical margin of error.

Voting for ward representatives had been suspended until March 18 in Nyabasi West, Goke Haraka wards in Kuria East constituency, and Ang'atananyokie in Samburu North constituency because of missing or interchanged names of candidates on the ballot papers. Candidates went uncontested in 12 county assembly ward representative races and were declared duly elected. The Center regrets the publication of provisional results while voting was still ongoing on March 5 in polling stations in Laisamis, Samburu, Kuresoi South, Nakuru East and West, Bahati, and Wagir.

CLOSING AND COUNTING

The accurate and objective counting of votes plays an indispensable role in ensuring the electoral process

is democratic and reflects the will of the voters.

International and regional obligations require that votes be counted by an independent and impartial electoral management body whose counting process is public, transparent, and free of corruption.⁶⁰

The polling station presiding officer was required by law to officially close the polling station at 5 p.m. However, voters who were still in the queue at 5 p.m. were to be allowed to cast their vote. Once all voters in the queue had voted, the presiding officer was to seal the aperture of all ballot boxes and affix the seal of the IEBC to prevent the insertion of any further ballot papers. He/she then invited election agents present to affix their own seals on the apertures of the ballot boxes if they wished to do so.

Immediately following the sealing of the aperture of the ballot boxes, the presiding officer was to make a written statement in the polling-station diary to record the details of the closing process and enclose in separate tamper-proof envelopes any spoiled ballot papers, a marked copy of the voter register for his/her polling station, the counterfoils of the used ballot papers, and the statement included in the polling-station diary.

After the closing process was complete, the official counting of the votes at the polling station began. Polling officials were to rearrange the station for the counting of votes and assign duties to the clerks for the counting procedure. The counting for the respective elective positions was carried out in the following order: president, member of the National Assembly, member of the county assembly, senator, women's county member in the National Assembly, and governor.

Polling station officials were to record the number of ballot papers issued to the polling station; the number of ballot papers, excluding spoiled ballot papers, issued to voters; the number of spoiled ballot papers; and the number of unused ballot papers.

⁶⁰ AU, ACHPR, Art. 17(1); UNHRC General Comment 25, para. 20; U.N. Convention Against Corruption, Art. 1819



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Officials seal ballot boxes after polls closed.

Ballot boxes at the polling station were then emptied one at a time in the area designated for counting. Ballot papers were to be unfolded, inspected to determine validity, displayed, announced to determine the candidate in whose favor it was cast, and piled accordingly.

Four types or definitions of ballot papers were allowed during counting: (1) a valid vote (2) a rejected vote (based on a number of qualities explained in polling station manuals such as not being an official IEBC ballot paper, lacking an official IEBC stamp, being unmarked or with multiple marks, and/or not clearly reflecting the voter's intent) (3) a rejection-objected-to ballot (one that was rejected by the presiding officer but disputed by a candidate agent) (4) a disputed vote (one considered valid by the presiding officer but disputed by a candidate agent).

Any election agent also had the right to require the presiding officer to recount the votes if they felt that the count was not carried out accurately. According to the law, the recount of the vote for any elective position is only allowed to take place twice.

Upon completion of the counting, the presiding officer then signed the declaration of election results form 34 (presidential election) and form 35 (National Assembly, county women's representative, senator, governor, and county assembly representative election). While it was not mandatory for election agents

to sign the declaration of results, it was considered good practice to do so. Agents could also register their objections in writing if for any reason they chose not to sign. A copy of the results form was to be posted at the polling station.

Presiding officers were to be provided with electronic devices to transmit provisional results directly from their polling station to both the constituency returning officer and the IEBC at the national tally center. All of the materials were then repacked in their assigned envelopes and sealed in the ballot boxes for transport to the constituency tally center.

In polling stations visited by Carter Center observers, closing and counting took place in a peaceful atmosphere. A significant number of counting operations did not reconcile the number of ballot papers properly or at all. Despite this irregularity, most polling stations completed the counting procedures adequately. Party agents and/or observers signed the results declaration forms in almost 100 percent of the places visited.

To promote transparency and reduce corruption, the IEBC adopted the policy of providing party agents with signed copies of the polling station results. In accordance with this policy, polling station tallies were meant to be posted at the completion of the count, and presiding officers were supposed to transmit the presidential results directly to the national tally center via an electronic results system designed for use on a mobile handset. However, in



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Presiding officer Lillian Anyango discusses legitimate vote marking with party agents before conducting the official count.



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nearly a quarter of counts observed by The Carter Center, the results form was not posted, undermining an important safeguard for the transparency of the counting and tabulation process.

At the polling-station level, Carter Center observers reported that nearly 100 percent of stations visited had party agents present and that complaints were submitted in only 4.2 percent of the cases, indicating that overall, IEBC personnel were considered by party agents to be compliant with procedures. In 95 percent of the occurrences observed, tally workers understood their responsibilities, and subsequently Carter Center observers evaluated the overall tally process as good or very good in 95 percent of cases. The failure of electronic transmission of results was confirmed at the constituency level, where the returning officer did not receive them in almost 60 percent of cases.

However, returning officers did receive all required forms in more than 97 percent of the instances observed. Carter Center observers noted that the recovery of all the forms 34, 35, and 36 from returning officers took time,

especially for the most distant constituencies. The Center's observers reported the rate of complaints submitted by party agents was higher at tally centers, reaching more than 12 percent.

SUMMARY FINDINGS

Kenya largely met its obligations in the conduct of polling and counting operations in the 2013 elections, despite serious drawbacks in the implementation of voter identification technology. The IEBC implemented well-elaborated voting and counting procedures that include many recognized good practices such as inking a voter's finger after he/she completed voting and providing candidate agents with a copy of the polling station results.

However, compressing the electoral calendar put the implementation of these processes under immense strain.

In particular, the cumulative difficulties—in tender and procurement of biometric voter registration equipment and services as well as the electronic voter identification devices to confirm a voter's identity against that record at the polling station—were reflected in the high rate of equipment failure. While there are important lessons for the IEBC in this aspect of voting procedures, of equal note is the relatively successful adaptation of polling-station officials to the situation and their reversion to the paper voter roll.

Also of note, Kenyans' right to participate in public affairs—as voters, election officials, and candidate agents on election day—was widely observed by The Carter Center. The high voter

Kenyans' right to participate in public affairs—as voters, election officials, and candidate agents on election day—was widely observed by The Carter Center.

Paul Kariuki Murene



Agents representing various parties observe the voting process.



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Paul Kariuki Mumeni



Dr. John Strelau, vice president of the Center's peace programs, and project manager Dr. David Pottie of the Carter Center's Democracy Program review the checklist while observing voting.

turnout of more than 86 percent would appear to be a strong vote of confidence by Kenyans in their electoral process, though admittedly, voters often reported varying motives for turning out at the polls.

Although long queues of voters are often cited as a sign of enthusiasm to participate in an election, they are just as often an indicator of problems that need to be addressed. There are likely many explanations. In some cases, it was evident that far too many voters were assigned to some polling stations, and the IEBC should review its distribution of polling locations, the number of polling stations, and the number of voters assigned to them. It may also require a survey of the types of locations that served as polling stations, the number of entry and exit points, queue management by election officials outside polling stations, and the visible display of clear information to direct voters to the appropriate polling station.

Voter education; the internal design and layout of polling stations; the training of election officials and the procedures for checking voter identity; the number and complexity of ballot papers; and other issues all contribute to the successful provision of the best quality of election that all voters deserve. These issues and potential solutions are well-known to the IEBC and others in Kenya and should be given consideration.



POSTELECTION DEVELOPMENTS

TABULATION OF RESULTS

Tabulation of results is an integral and important phase of the electoral process that ensures the will of voters is accurately and comprehensively reflected in the final results.⁶¹ The Independent and Electoral Boundaries Commission procedures require tabulation (referred to as tallying) to take place at the constituency and county level for all elections before being transmitted to the national level for final tallying and the compilation of results for the presidential election.

Upon completion of counting at polling stations, the presiding officer compiled and displayed result forms 34 and 35, respectively, for presidential, national, and local elections. The tally forms, ballots, ballot boxes, and other sensitive materials were then collected and brought to the constituency tally center by the presiding officer, where they were inspected by election officials under the responsibility of the returning officer in the presence of party agents and observers.

Returning officers conducted tabulation at two levels:

- Constituency returning officers were responsible for ensuring the deputy returning officer and presiding officers serving under them conducted elections in a free and fair manner, receiving election results from presiding officers, and conducting the final tally of votes for the constituency representative to the National Assembly and to the county assembly for the ward representatives.
- County returning officers were responsible for receiving and tallying election results from



Paul Karuki Mumene

A Kenyan police officer guards ballot boxes before the official count.

constituency returning officers within their county and for conducting the final tally for the election of county governor, senator, and county women's representative.

Constituency Tally Center

The constituency returning officer was responsible for the verification of the election results for all polling stations within that constituency and for the tallying of these results. The officer was also responsible for the final tally of constituency representatives to the National Assembly and ward representatives to the county assembly.

The tally process required returning officers to follow these steps:

- Tally the results from each polling station in that constituency with respect to each candidate and fill out these results in form 36. (The officer does not recount the votes from the polling station that were not in dispute. If an officer discovers in the process

⁶¹ U.N., ICCPR, Art. 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, Art. 1



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that the total number of votes cast in a polling station exceeded the number of registered voters for that station, he/she is to immediately discount those votes from the final count in the announcement of the election results.)

- Announce the total number of valid votes cast for each candidate with respect to each election
- Sign and date the respective forms and give all agents present copies of the forms
- Issue certificates to all people elected in the National Assembly elections and respective county assembly elections
- Seal various materials in tamper-proof envelopes and ballot boxes for delivery to the county tally center along with tally forms 34 and 35 (from all polling stations) as well as form 36 (for constituency results)

As with presiding officers from the polling stations, the constituency returning officer was to forward electronic provisional election results of the constituency to the county returning officer and the IEBC national tally center. Ballot boxes and tally forms 34, 35, and 36 were to be transported to the county tally center accompanied by security officers. Party or candidate agents were free to accompany under their own arrangements for transport.

County Tally Center

County tally centers were responsible for governor, Senate members, and reserved women's seats in the National Assembly and issued each of these winners their certificates indicating their election. As at the constituency tally center, this declaration of results was conducted in the presence of all election officials, party agents, and other observers.

All original copies of the county-level tally forms—as well as all the forms from all the polling stations in the county—were then to be packed in the used and empty ballot boxes and secured with the official IEBC seal, along with any other seals of election agents present, for transport to the national tally center in Nairobi.

National Tally Center

The IEBC established a national tally center in Nairobi to receive and broadcast both provisional presidential results received electronically from polling stations and all official paper tally forms. Every polling station result for the presidential election should have been transmitted electronically to the national tally center after counting was completed on election night. The media had a direct feed to these results as they were received, and candidates and their agents and accredited observers could gather at the national tally center. With these arrangements for transparency regarding announcing provisional election results, the IEBC hoped to avoid the speculation and rumors that accompanied the 2007 tabulation of results that was understood to have fueled postelection violence.

CHALLENGES IN TABULATION

Failure of Electronic Transmission of Provisional Results

After completing the count at polling stations, the presiding officer was to key in the results on a handheld device that transmitted the information to a central server at the IEBC's national tally center in Nairobi. The IEBC's electronic transmission of results system was set up to display provisional results as they arrived, without any filter or verification of incoming figures from the polling stations. In an effort to make the provisional results process transparent, the media received these figures simultaneously. The information displayed was often inaccurate, displaying sums that did not match numbers on the screen and changes that were made overnight.

In the 2010 constitutional referendum, the use of an electronic data transmission system made the results available within 48 hours and strengthened public confidence in the IEBC. Since that referendum, technology has been used in biometric registration of voters, fingerprint scans at polling stations on election day to identify voters, and electronic transmission of provisional results from



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polling stations. Regarding the use of electronic voter identification and electronic transmission of results, reliance on technologies that were only partially successful during a mock election exercise held before the March 4 election threatened to undermine the very trust they were designed to enhance.

Prior to the election, the IEBC had confidently pledged to release complete provisional presidential results within 48 hours of the close of polls. While a significant number of results (some 40 percent) were received and broadcast within 24 hours of the close of polls, the majority of the results were not. The IEBC's advance publicity for the transmission and receipt of provisional electronic results was extensive, but in the process it appears to have raised expectations that complete, albeit provisional, results might be known on election night. When this did not happen, the risk was that a different kind of speculation would set in or that some political actors might use provisional results to their advantage to spread rumors. The Center regrets the publication of provisional results while voting was still ongoing on March 5 in polling stations in Laisamis, Samburu, Kuresoi South, Nakuru East and West, Bahati, and Wagir.

On the evening of March 5, the IEBC stopped the electronic tally of provisional results entirely after the server receiving them proved unable to compile incoming data. In a televised press conference, IEBC Chairman Ahmed Issack Hassan explained to the public that the paper record of tabulation (various numbered tally forms) was the only legal base for final results; therefore, electronic display of provisional results would be stopped. Although this system had been the case all along, the IEBC's prior emphasis on the electronic results system created a false public impression that the tabulation process was being started over from scratch. In fact, the legal tabulation process always had been ongoing at constituency, county, and national level.

Two controversies in particular were created by the display of unchecked provisional results. The first originated from the display of more than 300,000 rejected ballots on March 5 that was reduced

overnight to 30,000. The IEBC wrongly attributed the high number of rejected ballots on March 5 to the complexity of a simultaneous vote for six different positions, only later to state that the original high number was the product of a server malfunction that multiplied spoiled votes by a factor of eight. This controversy signaled that the IEBC poorly managed the vote-counting process and undermined public confidence in their capacity to tally final results with accuracy.

The second controversy was created by the IEBC's other March 5 announcement: that rejected votes would be factored into the total sum of votes cast, which served as the basis for calculating the 50 percent threshold for the presidential election. This last-minute interpretation of the definition of "votes cast" in Article 138(4) of the constitution should have been taken well in advance and shared with stakeholders in order to avoid the confusion that followed this decision on such a crucial issue.⁶²

An additional issue about language clouded the understanding of rejected votes. Rejected ballots were defined in different ways, depending on which IEBC document was referenced. In the IEBC's election manual, rejected ballots are defined as (a) ballots that were not stamped in the back (b) votes given for more than one candidate (c) uncertainty for whom the vote is cast (d) ballots that had different serial numbers than those issued to the polling station (e) unmarked ballots. However, in the IEBC's polling-day guide for election officials, rejected ballots are defined as (a) unofficial ballot papers (b) those for which the intent of the voter was not clear (c) those in which the voter could be identified, thus breaching the secrecy of the vote. The existence of two separate definitions of invalid votes created a double standard for the invalidation of ballots and undermined the

⁶² "A candidate shall be declared elected as president if the candidate receives more than half of the votes cast in the election and at least twenty five per cent of the votes cast in each of more than half of the counties."



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principle that the vote of one elector should be equal to the vote of another.

Inadequate Publication of Tabulation Procedures

The availability of election-related procedures to the public in a timely manner in advance of an election is considered to be good practice for election management bodies.⁶³ Detailed, written procedures and guidelines for the organization and processing of polling station results were not made available by the IEBC until the very late stage of the tally process. Tally guidelines, when finally disclosed, only concerned the national level, while the constituency and county tallying remained unaddressed. Furthermore, instructions were of a very general nature and did not include the procedures for discrepancies or the usual safeguards for detecting possible errors and/or irregularities in the results. For example, observers did not have access to any written criteria for the placement in quarantine of mismatched results between forms 34 and 36 or other apparent errors on tabulation forms and the procedure put in place to troubleshoot them.

Therefore, the available instructions appeared to be insufficient to guarantee the integrity and accuracy of numerical tabulation. While Carter Center observers reported that most election officials appeared to understand the general tally process, the absence of detailed procedures may have disabled them from consistently troubleshooting data entry errors or counting discrepancies.

In spite of imprecise procedures, IEBC agents performed in an orderly manner and were able to compile results at the constituency and county level in due time. With more than 33,000 polling stations, an 86 percent turnout, and only a week to release the results, the potential for human error remained very high, complicated by the forced reliance solely on paper-based tally forms. Had the electronic transmission of provisional results functioned successfully, not only would it have provided an important boost in public confidence and reduced grounds for speculation, it would also have provided the IEBC with another data set for verification of results.

Inadequate Observer and Election Agent Access to National Tally Center

Firsthand access to information is integral to conducting credible and impartial observation. The Center's observers received adequate access to tabulation at the constituency and county level, which is important for an assessment of the quality of tabulation for the elected offices declared at those levels. However, the national tally center did not provide enough transparency for observers or party agents to assess the overall integrity of tally of presidential results. Unfortunately, the Center regrets the IEBC decision to confine party agents and observers to the gallery of the national tally center, making effective and meaningful observation impossible.

The Center observed many of the same kind of discrepancies in the tally procedures that had generated so much criticism and speculation in 2007: results announced at the national tally center differed from those announced at constituency level, missing tally forms⁶⁴, inconsistencies between presidential and parliamentary tallies, instances of more votes than registered voters, discrepancies between turnouts of the presidential and parliamentary elections, and expulsion of party agents from the tally space at the national tally center.⁶⁵

Over the next five days, the IEBC worked to address the errors in the results forms, applying various measures. Carter Center observers and others had inadequate access to the national tally process to confirm these processes and to pose questions. Very little detailed information was available, such as whether recounts of ballots were ordered at any polling station or whether there was any pattern to

63 International IDEA, International IDEA Code of Conduct: Ethical and Professional Administration of Elections, p. 12–13

64 "A judicial team scrutinized forms 34 and 36 for a total of 18,000 polling stations and found that 10 forms 34 were missing along with 75 forms 36. In 2008, the original statutory forms 16 and 16a used to record the results were often missing." ICG report Kenya in Crisis, Feb. 21, 2008

65 ICG report Kenya in Crisis, Feb. 21, 2008



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discrepancies among reported results or altered tally forms. In the absence of access to compiled documents and to IEBC personnel, the national tally of the presidential results forms was effectively rendered nontransparent for stakeholders and observers. This lack of access poses a serious limitation that undermines the appropriate role of observers and their key contributions to electoral transparency.

Discrepancies Between the Published Voter Register and Announced Results

The Center's examination of reported final results for the presidential election, recorded on form 36, showed noteworthy discrepancies. First, every county tally form reported a discrepancy in the recorded number of total ballots cast in the six different elections. Voters were supposed to be handed two ballots at a time from each of three different polling station clerks, resulting, in theory, in an equal number of ballot papers in each box. While some variation could be reasonably expected, IEBC publication of detailed results may yield more clues.

Second, the Center noted that the number of registered voters published with the presidential results released by the IEBC on March 9 differed from the voter statistics per county previously published by the IEBC on Feb. 24.

Third, the previous versions of the voter register also reveal some significant differences. For example, the provisional list of registered voters published on Dec. 18, 2012, and the list published on Feb. 24, 2013, show significant increases in the number of registered voters in eight counties. The increases range from 5,000 to as many as 12,000 voters added to the roll. In three counties, a similar number of voters were removed from the register. While small adjustments downward would have been expected, an apparent increase of approximately 100,000 voters is potentially more worrisome and deserves explanation.

Fourth, in a significant number of constituencies, the number of registered voters recorded on tally form 36 by returning officers in constituency tally

centers differed from those listed in the national voter register. The Carter Center's analysis of all 290 parliamentary constituencies revealed that in 167 constituencies the number of registered voters listed in form 36 was different from the number of registered voters announced by the IEBC at the end of the registration process.

The Center does not suggest that the discrepancies indicate an effort to add or subtract voters from a particular region or candidate. Rather, they are noted to underscore the importance of accuracy in tally operations and IEBC record keeping and the training of election officials in general.

Nonpublication of Detailed Election Results

One of Kenya's core obligations concerns promoting transparency in elections and other public processes.⁶⁶ To ensure such transparency, international good practice requires ballot tallies to be transmitted openly, with the results to be published in a timely manner, including at the polling station level.⁶⁷ To enable the public and other stakeholders to verify the accuracy of the results and to increase public confidence, it is important for the IEBC to publish the election results disaggregated by individual polling stations on its website. The Center remains concerned that the IEBC has not published detailed official results disaggregated at the polling station level.

Although the IEBC was still well within the legal timeline of seven days to produce official provisional results, the process for the physical delivery, receipt, and processing of paper tally sheets was time-consuming. On March 9, the IEBC released a public statement with the final results of the presidential elections. The results of all other elections were published in the government's official gazette on March 13. Although figures had been announced

⁶⁶ Elections Act, 2011

⁶⁷ Council of Europe, Handbook for Observers of Elections, para. 4.6. EISA and Electoral Commissions Forum of SADC, PEMMO, p. 26



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publicly at the tally center, the IEBC only published the names of the winners. Neither the number of votes received nor any other information concerning the election results was made public officially.

PRESIDENTIAL AND LEGISLATIVE ELECTIONS RESULTS

On March 9, 2013, Uhuru Kenyatta was declared the fourth president-elect of Kenya by the chairman of the IEBC with 6,173,433 votes or 50.07 percent of the valid votes cast, reaching the required double threshold of 50 percent plus one vote and 25 percent of the votes in half of the counties in order to be elected in the first round of elections.

This margin was surpassed by only 8,418 votes, making it a very close victory. His closest contestant, Raila Odinga, received 5,340,546 votes or 43.31 percent. In third place, Musalia Mudavadi obtained 3.93 percent, and the other five presidential candidates each received less than 1 percent. Based on a preliminary analysis of the announced results, it appeared that compared to Uhuru Kenyatta, Raila Odinga suffered from lower rates of voter registration and slightly lower turnout in his strongholds. The final figures for the presidential election showed voter turnout of more than 86 percent.

In 17 counties, voter turnout reached 90 percent or more, translating to a massive turnout that shaped the eventual results. Official results from each of the counties indicated clear voting patterns in favor of one of the two leading contenders. In Uhuru, Kenyatta's stronghold of central Kenya, voter turnout was 94 percent in Nyandarua and Muranga counties and 93 percent in Nyeri County. For Raila Odinga, Homa Bay, Siaya, and Migori counties reported voter turnout between 92 and 93 percent.

These figures reflected the critical regional and ethnic support for the two main contenders in the elections. Out of the 17 counties that reported the 90 percent-plus voter turnout, 11 were in Uhuru Kenyatta's strongholds, which shows that his Jubilee Alliance did well in rallying followers in its strongholds to get out and vote. In contrast, the counties

with the lowest voter turnout in the country were in some of Odinga's strongholds, notably, Kilifi (65 percent), Mombasa (66.6 percent), and Kwale (72 percent).

Kenyatta's association with Ruto, a one-time ally of Raila Odinga, added a significant number of voters, and together they counted on a substantial following in his Central province and lower Eastern Kenya. Unsurprisingly, Kenyatta won more than 80 percent of the vote in Kikuyu and Kalenjin areas of Western, Rift Valley, and Central provinces. While Odinga won the Luhya vote in Western province, Kenyatta proved to be more popular with some of Kenya's smaller ethnicities, securing over 50 percent of the Maasai vote in the southern region of Rift Valley province and over 90 percent of the Somali vote in the North Eastern province.

In both the Senate and National Assembly, Kenyatta's Jubilee Alliance secured the majority of seats and marshaled their numbers to win the coveted speaker's position of both houses. In the National Assembly, Jubilee commands a majority of 195 seats whereas CORD secured only 143 of the 350 seats. In the Senate, Jubilee and its affiliates secured the majority of 34 of the 68 seats while CORD managed 27 seats.

In the new constitutional dispensation, the Parliament's powers were enhanced, and most appointments by the executive branch now require the endorsement of members of Parliament. Therefore, Parliament will be asked to approve any and all Cabinet nominees and diplomatic appointments. Since Jubilee won the majority in both houses, it will find it easier to ensure proposals that require approval of the elected representatives are passed.

WOMEN'S REPRESENTATION

In a slight improvement from the outgoing Parliament, the number of directly elected women in the National Assembly increased from 10 to 16 (of 290 total directly elected seats, thus totaling only 5.5 percent). In addition to the 47 National Assembly seats reserved for women, an additional four women



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were selected among the 12 seats reserved to represent special interests such as youth and people with disabilities. This brings the total number of women in the National Assembly to 67 of 349.

No women were elected to the Senate, though 16 were appointed in the reserved Senate seats for women, with an additional three in other appointed seats for special interests, for a total of 19 of 68. No women were elected to the 47 governorships, and only 88 were elected among the 1,450 county ward assembly seats.

These figures demonstrate that progress still needs to be made to ensure that no more than two-thirds of elective public bodies' members are of the same gender⁶⁸ and to provide equal opportunities for women and men in the political sphere.⁶⁹

COUNTY ELECTION RESULTS

For the purposes of devolution, the constitution created 47 counties that are led by elected governors.

The official list of elected county assembly representatives revealed that parties allied to CORD enjoy a majority in the country's major counties of Nairobi, Mombasa, Kisumu, and Kakamega. Parties allied to the Jubilee Alliance control Nakuru, Kiambu, and Uasin Gishu counties. The list showed that out of the 85 elected county assembly representatives in Nairobi, the two main CORD partners, ODM and Wiper Democratic Movement, won a slim majority of 43 members against TNA and Alliance Party of Kenya's 42 members.

Nationwide ODM secured 16 governorships, TNA managed eight, and URP 10, while other parties reflecting the presidential results managed to get only a few counties. Overall, CORD won more governorships with a total of 23, while Jubilee came in second with 18, Amani won three, and three were unaffiliated. The absence of a perfect match between results from the national elections and gubernatorial elections can be explained by a combination of the indirect nature of the suffrage and the different nature of the constituencies that dissolved or enhanced tribal compositions.

The Orange Democratic Movement secured total control over Mombasa County with all 30 county representatives elected on its ticket. The Jubilee Alliance took control of the Nakuru county assembly with The National Alliance and its principal ally, the United Republican Party, winning a total of 47 out of the 54 elected county representatives.

In Kiambu County, one of the biggest in the country with 59 wards, TNA secured a huge majority of 56 elected representatives, with the remaining three elected on the tickets of Agano, Grand National Union, and Farmers parties. CORD also won control in the Kakamega county assembly which, like Kiambu, has 59 wards. Out of these, 41 county representatives are from CORD affiliate parties, while the other 18 are from parties allied to the Amani Coalition, UDF, and New-Ford Kenya.

In Kisumu County, which has a total of 34 wards, ODM commanded a majority of 29 elected representatives with its ally, the People's Democratic Party having four representatives and another CORD affiliate, the Federal Party of Kenya, with one county representative.

Further competition is expected in Bungoma County with a total of 44 wards, especially if the 18 members elected on parties allied to the Amani Coalition decide to join forces with their three colleagues from the Jubilee Alliance to face the 22 members elected on parties allied to CORD.

SUMMARY FINDINGS

Overall, Kenya partially fulfilled its obligations to ensure that the will of the people, as expressed through the ballot box, is accurately recorded and communicated. Important provisions were implemented to increase transparency while maintaining adequate security for the integrity of the ballot box. However, several areas that need improvement are evident and described below.

68 Art. 27(8) and 21(b) of the Constitution

69 Art. 27(3) of the Constitution



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The Carter Center regrets that the IEBC appears not to have prepared and made available an operational manual of procedures for all phases of tabulation. Carter Center observers enjoyed appropriate access to the tabulation process at the county and constituency levels where crucial steps in the tally process occurred and where many elective positions were declared. Access to the national tally center was inadequate and limited to the galleries, too far removed to effectively monitor the receipt and processing of tally forms. Election agents were similarly excluded.

The Carter Center commends the IEBC for setting up the national tally center in an accessible, centralized, and appropriate location in Nairobi. The media access to the receipt of electronic provisional results was an important innovation that should be repeated if a similar mechanism is adopted in future elections. The IEBC allowed the press to set up on site and convened regular press conferences to update the public on the tabulation process. The public display of electronic provisional results

at the time of their arrival at the national tally center was also a positive measure toward transparency. However, the unreliability of the data displayed through the tabulation process threatened to undermine political party and public trust in the IEBC. A strengthened system of checks on the quality of transmitted results will be an important reform since the dissemination of unchecked figures, especially the inaccurate number of rejected ballots, could have fueled a strong public reaction and damaged public trust in the ability of the IEBC to produce reliable election results.

Apparent discrepancies in some of the reported data, notably the number of registered voters, deserved greater explanation than was provided by the IEBC.

The overall results reveal the relative strength of the two largest coalitions—Jubilee and CORD—and underscore the need for the two coalitions and their member parties to cooperate in areas where they both enjoy support and to act responsibly as leaders and opposition where one or the other dominates in their respective strongholds. Election results also demonstrate that while the system of reserved seats for women was enthusiastically adopted, women fared poorly in other directly elected offices, and important amendments to the electoral system should be considered to strengthen the representation of elected women in Kenya.

The absence of published detailed election results at each level of tabulation down to the polling station is unfortunate as it removes an important means for the public to verify results. The posting of a copy of polling station results is not only a useful means to publicize local results, but it is most effective when the public, parties, and observers can use the posted polling station results as check on how results are managed through the tabulation

process. While some countries cite fears of retribution should polling station results be known, the opposite case for publication is much stronger and has the advantage of signaling to parties and candidates where they received support and where they did not, providing a potential guide to future efforts at public outreach.

There were, however, several important differences in the administration of the results process in 2013 compared to 2007 that likely contributed to a broad acceptance of the outcome of the elections. First, there appears to have been a popular renewal of public confidence in the judiciary (or at least in the Supreme Court), with the improved vetting of magistrates thereby creating a more credible dispute resolution mechanism that contributed to a peaceful

Access to the national tally center was inadequate and limited to the galleries, too far removed to effectively monitor the receipt and processing of tally forms.



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election. Second, the IEBC systematically updated the results of the presidential election and less frequently the results of other types of elections with live public statements on TV and radio. Access to constituency and county tally centers was excellent, often including media, election agents, observers, candidates, and their supporters. Live media broadcasts showed IEBC returning officers reading out results at their respective levels and, where they

declared winners, handing over certificates of election to the winning candidate. This approach to transparency is welcome and should be maintained at all levels. Third, the presidential candidates themselves demonstrated their commitment to the electoral process and independence of the IEBC's administration of the elections. They accepted the election results as credible and where they did not, they took their petitions through the appropriate legal process.



ELECTORAL DISPUTE RESOLUTION

Efficient electoral dispute mechanisms, including, as necessary, the provision of a fair and public hearing before a tribunal, are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.⁷⁰ Therefore, effective dispute resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process.⁷¹

With a renewed public confidence in its capacity to be a fair arbitrator of political divisions, the judiciary played an active role from the beginning of the electoral process. The most important role was played by the Supreme Court Chief Justice Willy Mutunga. The Carter Center commends the court for upholding the highest standards of transparency in its hearings by having retransmitted the entirety of the pretrial conference and public hearing of the presidential election litigation process. As a pioneer measure, the Center hopes it will be reproduced in other parts of the world to ensure transparency and reinforce trust in electoral dispute resolution mechanisms.

The constitution provides that judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this constitution.⁷² In exercising judicial authority, the courts and tribunals are to be guided by the following principles:

- Justice shall be done to all, irrespective of status
- Justice shall not be delayed
- Alternative forms of dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms shall be promoted, subject to clause 3
- Justice shall be administered without undue regard to procedural technicalities
- The purpose and principles of this constitution shall be protected and promoted

Traditional dispute resolution mechanisms that are used in a way that contravenes the Bill of Rights result in outcomes that are repugnant to justice or morality and are inconsistent with this constitution or any written law.

Previously, impunity within the justice system undermined the rule of law and underscored the need for urgent corrective measures to prevent a crisis similar to what Kenya experienced in the last elections. The judiciary has developed a framework that has placed it on the path of institutional transformation. The framework is currently at the validation stage, but in the meantime a strengthened vetting process of magistrates has been implemented in an effort to renew public trust in the judiciary. In 2011, the Vetting of Judges and Magistrates Act was passed by Parliament, establishing the Judges and Magistrates Vetting Board to vet the suitability of all judges and magistrates who were in office on the effective date of the new constitution. The work of the board has resulted in a cleanup of the judiciary with judges whose qualifications and integrity were questioned being dismissed from service.

70 ICCPR, Art. 2(3): "Each State Party to the present covenant undertakes: (a) to ensure that any person whose rights or freedoms are herein recognized as violated shall have an effective remedy, notwithstanding that the violation has been committed by people acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted." UNHRC, General Comment 32, para. 25: "The motion of fair trial includes the guarantee of a fair and public hearing."

71 U.N., UDHR, Art. 21; AU, ACHPR, Art. 7. "Every Individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, law, regulations and customs in force" and "the right to be tried within a reasonable time by an impartial court or tribunal."

72 Constitution, Art. 159



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In addition to the vetting process, the new constitution provided for a deep reform of the judiciary system as a whole. The Supreme Court has the highest jurisdiction in the country, followed by the Court of Appeal, high courts, magistrates courts, and other subordinate courts. The appointment and dismissal of judges and magistrates, vested by an independent Judicial Service Commission, were essential steps to renew the trust of Kenyan citizens in their judicial system. The renewed judiciary and legal framework provides a credible dispute resolution mechanism that renders unjustifiable the use of violence as a tool to contest election results.

The efficient distribution of cases between magistrates courts for county representatives, high courts for parliamentary, senatorial, governorship, and women's representative contestants, and the Supreme Court for the presidential elections is instrumental to a swift resolution of disputes. However, with only 70 high court judges in place and a period of six months to determine election disputes, along with the priority put on electoral cases, there is a strong likelihood that the courts will be forced to prioritize electoral disputes over their normal work, potentially impeding access to justice for Kenyans. In a highly charged political atmosphere for elections to entirely new offices, Kenyans will have to be patient just as the judiciary must ensure that full access to redress is enabled.

ELECTORAL OFFENSES AND JUDICIAL RESPONSES

Chapter 7 of the electoral law provides that election offenses will lead to warning, disqualification, prosecution, or imprisonment. The main election offenses punishable by law include:

- Double/multiple registration: your name appearing more than once on the voter register
- Having more than one voter card and/or using another person's card
- Selling or buying a voter card: buying or selling a voter card for cash or material gain

- Hate speech targeting political opponents
- Destruction of campaign materials of the opposing candidate
- Voting more than once
- Prevention, obstruction, or barring of a person from voting
- Campaigning on polling day

The Carter Center welcomed the fast-tracking of all elections-related matters by the judiciary and the establishment of the Judiciary Working Committee on Election Preparations by the chief justice to develop strategies to efficiently and effectively manage elections disputes. Strategies included special training for all judges, magistrates, and court registrars to handle election offenses and disputes and the adoption of the election petitions rules and Supreme Court rules on presidential election petitions, which were published in newspapers. In combination, these measures were designed to enhance the transparency and credibility of the institution while providing stakeholders with clear rules for the settlement of disputes.

In the period building up to the elections, the judiciary addressed multiple cases directly affecting the electoral process. These cases included all the matters arising from the delimitation of electoral units at the constituency and ward levels and questions on the election date. A number of cases relating to the procurement process of the IEBC and one against international observers also were filed and concluded before the elections.

It is important to note that the case on the procurement of ballot papers concluded a few days before the elections. This case presented a tense period for the voters, as its determination had a significant impact on the IEBC meeting critical operational deadlines. A decision of the court on Feb. 15, 2013, was issued in regard to the integrity of a presidential candidate and his running mate. The efficiency with which the courts have dealt with matters



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coming before them has increased the credibility of the judiciary's ability to settle electoral disputes with impartiality.

Carter Center observers noted the renewed public trust enjoyed by the judiciary and the role it has taken in solving disputes arising from candidate nomination. However, the high number of cases submitted to the courts during the pre-election period interfered with IEBC preparations and threatened to delay the elections in some constituencies where unsuccessful primary candidates were reinstated in their right to stand through court decisions. The high number of petitions filed regarding disputed party primaries, IEBC tender and procurement procedures (e.g. court challenges to the awarding of the contract to print ballots papers), and the eligibility of some presidential candidates (e.g. the challenge that sought to bar Uhuru Kenyatta and William Ruto's candidacy on the basis of facing ICC charges) is a testimony of public trust in the judicial system. Nevertheless, it should not be used as a tool to undermine or disrupt the electoral process. In addition, the high cost of a petition could have been a deterrent for voters and parties with the lowest financial capacity.

PRESIDENTIAL ELECTION DISPUTE RESOLUTION

A petition against the results of the presidential election can be filed by any citizen of Kenya. Any ground can be the basis for a petition as long as it is deemed sufficient by the court and is not frivolous or scandalous. The deputy president-elect and the IEBC are automatically included as respondents to any petition against the results of presidential elections. The petition has to be submitted within seven days of the declaration of results and determined by the Supreme Court within 14 days after its filing.⁷³ At the time of the filing, the petitioner must deposit a sum of 1,000,000 Kenyan shillings, approximately \$11,500 U.S., as security for costs; otherwise the petition will be dismissed.

The electoral law gives extended powers to the

courts in deciding on the outcome of the judicial process: "No election shall be declared to be void by reason of noncompliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution or that the noncompliance did not affect the result of the election."⁷⁴ This article has specific implications for the role of the courts in determining the validity of final election results. The disposition makes it more difficult to void a presidential election if the court finds that overall, the election respected very broad constitutional principles (themselves subject to argument). The Supreme Court has the power to make any order it may deem fit, and in those circumstances its decisions are not subject to appeal.

With regard to other elective positions, a constitutional time frame of 28 days after the declaration of results by the IEBC is established for all petitions concerning an election other than the presidential.⁷⁵ As the results for all elections except the presidential were published on March 13, the deadline was set for April 10. The high courts are responsible for hearing matters pertaining to parliamentary and gubernatorial elections. Magistrates courts receive petitions for county assembly elections. A petitioner seeking to challenge a Parliament member or a county governor must deposit 500,000 Kenyan shillings (\$1,150 U.S.), while a petitioner seeking to challenge the election of a member of a county assembly deposits 100,000 Kenyan shillings (\$5,700 U.S.).

Three petitions against the presidential election results were submitted to the Supreme Court within the time frame indicated in the constitution. One petition from Jubilee supporters challenged the inclusion of rejected votes in the final tally of the presidential poll, while those from Raila Odinga and from

⁷³ Constitution, Art. 140

⁷⁴ Elections Act of 2011, Art. 183

⁷⁵ Constitution of 2010, Art. 87



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the Africa Center for Open Governance (AFRICOG) both sought to invalidate the election and instigate the organization of fresh presidential elections. Attorney General Githu Muigai was admitted as friend of the court, or *amicus curiae*.

The two-day pretrial conference started on March 25 and was followed by two days of hearings. At the pretrial conference, the petitions were consolidated with the CORD petition acting as the lead file and narrowed down to four issues:

1. As to whether the presidential election held on March 4, 2013, was conducted in a free, fair, transparent, and credible manner, in compliance with the provisions of the constitution and all relevant provisions of the law
2. As to whether Uhuru Kenyatta and William Ruto were validly elected and declared as president-elect and deputy president-elect of the Republic of Kenya, respectively, by the IEBC in the presidential elections held on March 4, 2013
3. As to whether the rejected votes ought to have been included in determining the final tally of vote percentages in favor of each of the presidential candidates by the IEBC
4. As to what consequential declarations, orders, and reliefs the Supreme Court ought to grant based on the above determinations

As for the trial, there were five main arguments brought to the court by the petitioners:

1. Poll books, the biometric voter register, and the system for electronic transmission of results were poorly procured and prepared, so they were bound to fail from the very beginning.
2. The failure of the electronic identification system and consequent return to printed lists of voters opened the system to manipulation, which effectively took place on election day.
3. In spite of having been finalized and closed for registration on Feb. 20, the number of voters on the register was increased without any known explanation.

4. Tally forms 36 were manipulated in order to forge results as illustrated by instances of higher numbers of votes cast than voters registered.
5. The total number of votes cast for presidential candidates was higher than for the other elective positions even when taking into consideration spoiled and rejected ballots.

The court 1) rejected a request from AFRICOG that would have required the IEBC to produce the manual voter register used in polling stations on election day, on the basis of a lack of time to scrutinize documents from 33,000 polling stations 2) rejected a demand from CORD for a forensic audit of the electronic tally system used by the IEBC to compile the presidential results 3) refused to accept a lengthy affidavit raising new allegations, including evidence from 122 constituencies, because the evidence was filed without the permission of the Supreme Court and because there was no time for respondents to file a reasonable answer.

At the beginning of the proceedings, the Supreme Court ordered a verification of forms 34 and 36 for 22 polling stations to verify the number of votes cast, valid votes, and rejected votes. The judicial verification under the supervision of the registrar of the Supreme Court was not open to international observation. However, CORD and Jubilee were able to send 10 observers each to scrutinize the process. The methodology used for this exercise is unclear, and the report from the registrar did not produce any figures of votes cast, turnout, or valid and invalid votes, nor did it produce any remark or conclusion on the discrepancies between the forms or provide the court with sufficient elements to take any kind of decision. The judicial team also scrutinized forms 34 and 36 for a total of 18,000 polling stations and found that forms 34 were missing from 10 polling stations, along with forms 36 missing from 75 polling stations. The team did not report on discrepancies between numbers in forms 34 and 36, thereby considerably reducing the added value of the exercise.

It is also surprising that the Supreme Court did not make any decision regarding the 75 missing forms 36.



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The court did not issue a summons to the IEBC or demand explanations. It is unclear to the Center to what end the retrial exercise was conducted and what part of the Supreme Court reasoning was based on the report from the registrar of the Supreme Court.

After another two days of deliberation, the Supreme Court gave a unanimous decision of rejection of all petitions and confirmed the results of the presidential election on the last day of the constitutional time frame, March 30. The written judgment of the Supreme Court was available two weeks later. The results of the election were found to be valid, and the swearing-in of the president-elect was conducted on April 9, administered by the chief registrar and witnessed by the chief justice as provided for under the Constitution of Kenya.⁷⁶

Former Prime Minister Raila Odinga made a television appearance, acknowledging the decision of the Supreme Court and affirming his support for the rule of law and constitutional order. While reaffirming his arguments disputing the results, his speech appealed for respect for the Supreme Court decision, and he wished good luck to President-elect Uhuru Kenyatta and

his Vice President-elect William Ruto. The Carter Center commends CORD supporters for having remained calm and respecting Odinga's appeal for peace and unity of the country.

SUMMARY FINDINGS

Kenya's judicial institutions and framework for managing electoral disputes met the country's obligations to provide citizens with the right to appeal in a timely and public fashion. The presidential election petition proceedings were held in a very professional and rigorous manner. The lawyers representing petitioners avoided making personal accusations, and the Supreme Court judges kept the hearings in line with the highest standards of professionalism and integrity necessary for the conduct of electoral litigation. Although reform of Kenya's judicial system is a work in progress, the management of electoral disputes in the 2013 elections marks an important early success for the reforms that have been implemented thus far.

The Supreme Court gave a unanimous decision of rejection of all petitions and confirmed the results of the presidential election.

⁷⁶ Constitution of 2010, Art. 141.2(b): "The President-elect shall be sworn in on the first Tuesday following the seventh day following the date on which the court renders a decision declaring the election to be valid, if any petition has been filed under Article 140."



SPECIAL TOPICS

The right to security of the person includes the protection of voters, candidates, poll workers, and observers from coercion, intimidation, and violence.⁷⁷

ELECTORAL VIOLENCE

Small Arms

Poor and corrupt policing of the borders between Kenya and its neighbors has facilitated the influx of large quantities of small arms into Kenya. Individuals have been able to acquire weapons for overt criminal purposes. The proliferation of small arms and light weapons is one of the biggest security challenges currently facing Kenya and the East African subregion (Uganda, Tanzania, and Kenya). The trafficking and wide availability of these weapons fuel instability and conflict and pose a threat, not only to security but also to sustainable development. The widespread proliferation of small arms is contributing to alarming levels of armed crime, in both rural and urban areas, which exacerbates armed cattle rustling and conflicts in pastoralist areas.

Kenya also shares porous borders with some of the most politically unstable countries in Africa such as Somalia and Sudan. Kenya's long and isolated borders with Tanzania, Uganda, Sudan, Somalia, and Ethiopia (and its 536 km coastline) are difficult to patrol owing to limited resources and insufficient training. The fact that the borders are not properly and effectively policed means that arms traffickers and bandits find easy entry points along the porous borders. Specifically, the rebel movements in Ethiopia, Sudan, and Uganda benefit from this state of affairs. Towns on or close to the borders of these countries are major entry points for illegal firearms.

Crime

Mungiki. Often referred to in the Kenyan press as "an outlawed sect," Mungiki has roots as a religious

movement of the Kikuyu, Kenya's most populous ethnic group. Some call it a descendant of the 1950s-era Mau Mau movement, in which Kikuyu guerrillas battled the British colonial establishment under the banner of "Land and Freedom." Central to the International Criminal Court case is the nature of the gang's links to the Kenyan government, despite a bloody, controversial battle to crush the group. Prosecutors at the ICC contend Uhuru Kenyatta has (had) strong ties to Mungiki.

Al-Shaabab. The term means the "youth" in Arabic. This group is active in Somalia and is said to be strongly associated with al-Qaida and Nigeria's Boko Haram. They still control large areas of Somalia and are said to be active in refugee camps in Kenya. Some powerful businesspeople of Somali origin who reside in Kenya are said to be their sympathizers. The extent to which they are involved in Kenya's politics needs investigation.

Security and Violence

Following the experience of the 2007 presidential election, during which over 1,100 people died and some 600,000 were forced to flee their homes, there was widespread concern that the 2013 elections would see a repeat of such violence.

Kenya is a country with a high level of crime, complicated by ethnic tension and intense competition for land and other resources. For example, international competition for Kenya's resources (oil in Turkana and South Sudan), in addition to the resentment by some politicians of Western influence, serve to make Kenyan politics extremely complex and difficult to interpret. Kenya's military involvement

⁷⁷ "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." U.N., International Covenant on Civil and Political Rights, Art. 9



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in Somalia since October 2011 and the existence of a coastal separatist movement (the Mombasa Republican Council–MRC) further complicate the country's regional and domestic political scene.

It was anticipated that politically motivated violence would increase in the run-up to the elections and peak in the two or three days immediately following the elections. Election day itself was expected to be quiet. In fact, the widespread violence predicted by many over the election period and, in particular, following the announcement of results did not materialize. Serious incidents and election-related killings in the immediate election period were limited to the Mombasa area and to the neighboring Coast province counties of Kilifi and Kwale.

Perhaps because of the impending ICC trials and because the eyes of the world were perceived to be on Kenya, politicians from all parties largely avoided the ethnic hate speech and sponsorship of ethnic violence and crime that characterized the 2007 election.

The killings in Coast province all took place during March 1–6, mostly immediately prior to or after voting on March 4. It appears that the incidents prior to the polling stations opening were intended to intimidate voters in Coast province into not voting. This objective was not achieved, and voters demonstrated determination and courage in turning out in large numbers to vote.

During the two-week period Feb. 25–March 10 (the day after the results were announced), 68 percent of political/ethnic incidents occurred in North Eastern province⁷⁸ and Coast province.⁷⁹ For North Eastern province, the variation in the number of incidents was statistically insignificant, the motives for violence being various and frequently overlapping. Attacks attributed to Islamic fundamentalist groups such as Al-Shebaab could equally be attributed to other armed opposition groups. Individuals move between groups, and crime, interclan and subclan violence, and resentment of refugees and central authority are all motives.

Several attacks targeted various candidates before the elections. A complex attack targeting police in

Dadaab on Jan. 30 was probably politically motivated but not specifically aimed at disrupting the elections. One incident directly targeted a presidential candidate. The detonation of an IED in the vicinity of Garissa Primary School on Feb. 16 by the person assembling it was certainly intended to kill either Yusuf Haji, the minister of defense, or presidential candidate Martha Karua, both of whom were due to speak at the school the following day. On March 3, a gun attack on the vehicle of a Garissa parliamentary candidate was clearly politically motivated, as were an IED attack and a grenade attack on polling stations on March 4, though no one was hurt. However, in spite of these incidents, there was no clear spike in election-related violence.

Conversely, the spike of incidents in Coast province that occurred March 1–6 was highly unusual.

POSTELECTION VIOLENCE AND FEAR OF ESCALATION

A serious incident took place in Malindi in the early hours of March 28, prior to the announcement of the Supreme Court decision on the CORD petition disputing the election results. Upward of 60 men attacked a casino with bladed weapons, killing one policeman on guard and injuring another. The immediate purpose of this attack was to seize the officers' rifles and then to attack the police station in order to seize the weapons held in the armory there. Alerted to the gang's intention, the Malindi police laid a quick ambush, killing six of the attackers and seriously injuring several more.

As dusk fell on the evening of March 30, some hundreds of youths, supporters of Raila Odinga's ODM party, began rioting in Kisumu in response to the unfavorable ruling of the Supreme Court on Odinga's election petition. Protests spread from the Kondele market area to the Manyatta and Nyalanda

⁷⁸ 27 percent: 6 incidents

⁷⁹ 41 percent: 9 incidents



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districts. Youths vented their anger by throwing stones and burning piles of tires and rubbish on the roads. The police paramilitary General Service Unit deployed to control the rioting and to protect lives and property, and when the rioters began stoning them, they responded robustly, including the use of firearms. Two rioters were shot and killed, and 24 were admitted to the hospital with injuries. By 10 p.m., the rioting had largely been brought under control, and the following morning saw the city streets almost deserted.

Unsurprisingly, given its size and the willingness of both criminals and police to use firearms, Nairobi had by far the highest number of fatalities caused by criminal incidents. But it had a much smaller number of fatalities as a consequence of political or ethnic incidents. In North Eastern province, high levels of fatalities and injuries were closely linked to the high number of political and ethnic incidents. The very high level of fatalities due to political/ethnic incidents in the Rift Valley is largely a consequence of the prevalence of ethnically based cattle raiding using firearms. The Coast province experienced a relatively large number of political/ethnic fatalities but a much smaller number as a consequence of crime. In the more politically homogeneous provinces of Western, Central, and Eastern, the number of politically or ethnically motivated fatalities was much smaller.

Lastly, Nyanza province had relatively low levels of crime but a relatively high level of fatalities and injuries related to political/ethnic incidents, which were generally concentrated in the Migori and Homa Bay areas.

There was a clear reduction in criminal incidents in the week immediately prior to the elections on March 4, followed by a rapid return to at least normal levels thereafter. It remains to be seen whether the crime levels during the week of March 18–24 presage generally increasing levels of crime in Kenya or simply a spike, probably reflecting postelection desperation to make money. The expectation among diplomatic and nongovernmental analysts was that crime and violence would escalate as the elections drew closer, thus making the challenges for the incoming administration as intractable as ever.

In spite of a well-established police culture of extrajudicial killing of criminals, the justly fearsome reputation of the police paramilitary General Service Unit, and the likely fatalities detailed in this report, the police response to politically motivated civil disorder in Nairobi and Kisumu has, in general, been remarkably restrained and commendably professional. This was also apparent in the case of disturbances following the announcement of the election results on March 9. Police response was prompt, pre-emptive, robust, and proportionate.



CONCLUSIONS AND RECOMMENDATIONS

The watchwords of Kenya's 2013 elections were transparency, security, and credibility. The March 4, 2013, general elections were an opportunity for Kenya's political actors and institutions to respond to the violent aftermath of the 2007 elections with renewed commitments to peace and tolerance. In practice, the 2013 elections were a dramatic improvement compared to 2007, but the reform process is far from complete. The elections were largely peaceful and for that all Kenyans deserve to be congratulated, especially the presidential and other candidates who failed to win seats but accepted the results.

While the elections were relatively peaceful and well-organized, The Carter Center international election observation mission highlights areas for improvement. These improvements can be grouped into three main elements: legal reforms, political party practices, and election management.

The use of technology to strengthen voter confidence in the conduct of polls was a centerpiece of the 2013 elections. Justified by the need to reinforce civic confidence in the voter register and the election results process, the track record of these systems was at best mixed. They proved to be expensive, required a large amount of IEBC's capacity, and both the electronic voter identification verification at polls and the electronic transmission of provisional results from polling stations largely failed to achieve their goals. The failure of the electronic voter identification device (EVID) could have jeopardized the integrity of the vote. Fortunately, the IEBC polling station officials used paper lists as backup with success. Similarly, the use of handheld devices for polling station presiding

officers to transmit provisional presidential results directly to the national tally center, while designed to enhance confidence in the results, ultimately failed and nearly undermined the very goal it was designed to achieve.

CONCLUSIONS

Legal Framework

Overall, Kenya largely fulfilled its obligations to ensure that a sound and comprehensive legal framework was in place for the 2013 elections. Although the Center is disappointed in the several weaknesses, Kenya's constitutional and legislative reforms provided Kenyans with the basic framework for genuine democratic elections.

Several amendments were made in the immediate electoral period, one of them withdrawing the obligation of party membership three months prior to party nomination. This amendment allowed candidates to switch parties at the last minute,

opening the possibility of party-hopping for losing aspirants and withdrawing an essential safeguard against fraud, manipulation, and back-dating of candidate nominations.

The Carter Center especially regrets that the Kenyan Parliament failed to pass specific legislation to ensure that women would occupy at least one-third of all elected offices. The Supreme Court's advisory opinion to postpone the application of the one-third quota of women in elective positions is a step back from the constitutional commitment of Kenya to ensure equal eligibility but left aside new regulations that could have strengthened the ability of candidates and parties to contest the elections on more equitable grounds.

The elections were relatively peaceful and well-organized.



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Another disappointment was the failure of the outgoing Parliament to introduce new political party funding regulations to govern the 2013 elections.

Electoral System

Kenya has embarked on an ambitious political and electoral reform project in the redesign of elected representation and the creation of an entirely new county level of administration.

Kenya's adoption of a mixed electoral system with varying degrees of first-past-the-post, proportional representation, and nomination—as well as introducing a higher threshold for winning the presidency—remains to be tested in future elections. Although it may be several electoral cycles before the specific effects of the electoral system become apparent, the overall framework creates more opportunities for Kenyans to seek elected office and participate in public affairs.

Election Management

The IEBC faced more scrutiny in the 2013 elections than any other Kenyan political institution. Early problems with the tender and procurement of biometric voter registration equipment produced ripple effects throughout the entire electoral calendar. Although the IEBC responded with cutting short various time periods for voter registration and public inspection of the voter roll, on the basis of expedience, this had the effect of undermining Kenyans' right to vote. The tight timelines also affected the sequence of key steps in election preparations, notably the identification of polling stations and allocation of voters. One result was many polling stations with thousands of voters, divided into "streams" but generating very large crowds of voters assembled at a single location and facing many hours in line to vote. Other preparations also appeared to suffer. Nevertheless, overall the IEBC appears to have largely fulfilled its mandate in these elections.

The IEBC is more than a technical body and must manage complex political and power relationships, including international donor relations, while maintaining an open line of communication with

the public. On these counts, IEBC Chairman Ahmed Issack Hassan and the other commissioners did a good job of balancing different pressures while trying to deliver on-time elections.

Voter Registration

The IEBC largely met its responsibilities to build an accurate and comprehensive voter register under significant time constraints, some of which were beyond its control. The missed deadlines and compressed time frames put pressure on the integrity of this process but do not appear to have damaged its overall credibility. The final voter register figures reveal low rates of registration in several regions of the country and among some marginalized communities. Efforts should be redoubled to make their future inclusion possible. Any restrictions on the right to register as a voter should be consistent with international standards. The period for public verification of the voter register was reduced to only two weeks, an inadequate time to allow citizens to confirm if they were registered, and other election actors had inadequate access to the voter register before the elections.

For future elections, the biometric voter registration system, if effectively and sustainably managed and joined with effective electronic voter identification at polling stations, could prove to strengthen voter confidence that their right to vote is safe and secure.

Voter Education

The IEBC launched a crash-course voter education initiative just three weeks before the March 4 elections. While the IEBC worked closely with outside partners to develop voter education programs, Carter Center observers noted a lack of technical and financial support from the IEBC in the implementation of these programs. Center observers also reported on the lack of clarity of voter education materials, which were not well-developed for illiterate, semi-illiterate, or blind voters.

Nevertheless, high voter turnout and the number of valid votes cast reflect positively on voter awareness of the elections and how to cast a ballot. The



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Center hopes that in future elections voter education will begin earlier in the pre-election period and continue throughout the electoral cycle. In addition, greater effort should be made to ensure that voter education materials are comprehensible for all voters.

Candidates, Parties, and Campaigns

Overall, Kenya largely met its obligations to ensure the right to participate in public affairs, including the right to vote and to seek elected office. However, the Center also observed the effects of highly differential levels of wealth and resources available to candidates, especially for the presidency and particularly for all women candidates. More effective legislative, institutional, and civil society support for equitable campaign finance regulation (of various means) could provide a more level playing field for aspirants and parties, especially women, youth, and minority candidates.

Other important areas of further reform deserve attention, notably improved regulation and/or oversight of party primaries to promote internal party democracy and to ensure a fair and equitable opportunity for aspirants to seek their party's nomination; realizing the country's commitment to ensuring at least one-third of elected positions are held by women; and building a political culture that enables all voters and candidates to enjoy their right to security and freedom from discrimination, harassment, and intimidation.

Voting, Closing, and Counting

Kenya largely met its obligations in the conduct of polling and counting operations in the 2013 elections, despite the failed implementation of electronic voter identification technology. IEBC polling-station officials successfully implemented well-elaborated voting and counting procedures that include many current best practices, such as inking a voter's finger after he/she has completed voting to deter multiple voting and providing candidate agents with a copy of the polling station results to support transparency.

However, compression of the electoral calendar put these operations under immense strain in their



Paul Karuki Mumene

Using the biometric voter registration system, a voter's fingerprints could be scanned to verify identity.

implementation. In particular, the cumulative difficulties in tender and procurement of biometric voter registration equipment and the electronic voter identification devices to confirm a voter's identity at the polling station were reflected in the high rate of equipment failure, observed by the Center and other groups at a rate of approximately 50 percent failure. While there are important lessons for the IEBC in this aspect of voting procedures, of equal note was the relatively successful adaptation of polling station officials to the situation and their reversion to their polling station's segment of the paper voter roll.

Kenyans' right to participate in public affairs, as voters, election officials, and candidate agents on election day was widely observed by the Center. The high voter turnout of more than 80 percent appears to be a strong vote of confidence by Kenyans in their electoral process, though admittedly, voters often reported varying motives for turning out at the polls. Although long queues of voters are apparent in many elections, Kenya's being no exception, and are cited as a sign of enthusiasm of the people to participate, they also may be an indicator of other problems that should be addressed. There are likely many explanations. In some cases, it was evident that far too many voters were assigned to some polling stations and that the IEBC should review its distribution of



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polling locations, the number of those stations, and the number of voters assigned to them. A resolution may also require a survey of the types of locations that served as polling stations and the number of entry and exit points as well as queue management by election officials outside polling stations and the visible display of clear information to direct voters to the appropriate polling station.

Multiple voting operation issues presented a mix of good practice and areas for improvement. These included voter education, the internal design and layout of polling stations, the training of election officials, the procedures for checking voter identity, the number and complexity of ballot papers, and other issues that contribute to the successful provision of the best quality of election that all voters deserve. All of these issues and potential solutions are well-known to the IEBC and others in Kenya and should be given due consideration for improvements.

Tabulation and Results

Overall, Kenya partially fulfilled its obligations to ensure that the will of the people, as expressed through the ballot box, was accurately recorded and communicated. Important provisions were implemented to increase transparency while maintaining adequate security for the integrity of the ballot box. However, several areas of improvement are evident.

The Carter Center regrets that the IEBC appeared not to have prepared and made available an operational manual of procedures for all phases of tabulation. Carter Center observers enjoyed appropriate access to the tabulation process at the county and constituency levels where crucial steps in the tally process occurred and where many elective positions were declared. However, access to the national tally center was inadequate and limited to the galleries, too far removed to permit meaningful access to the

receipt and processing of tally forms. Election agents were similarly excluded.

The Carter Center commends the IEBC for setting up the national tally center in an accessible, centralized, and appropriate location in Nairobi. Media access to the receipt of electronic provisional results

was an important innovation that should be repeated if a similar mechanism is adopted in future elections. The IEBC allowed the press to set up on site and convened regular press conferences to update the public on the tabulation process. The public display of electronic provisional results at the time of their

arrival at the national tally center was also a positive measure toward transparency. However, the unreliability of data displayed through the tabulation process threatened to undermine political party and public trust in the IEBC. A strengthened system of checks on the quality of transmitted results will be an important reform since the dissemination of unchecked figures, especially the inaccurate number of rejected ballots, could have fueled a strong public reaction and damaged public trust in the ability of the IEBC to produce reliable election results.

The apparent discrepancies in some of the reported data, notably the number of registered voters, deserved greater explanation than was provided by the IEBC.

The overall results reveal the relative strength of the two largest coalitions—Jubilee and CORD—and underscore the need for the two coalitions and their member parties to cooperate in areas where they both enjoy support and to act responsibly as leaders and opposition where one or the other dominates in their respective strongholds. The election results also demonstrate that while the system of reserved seats for women was enthusiastically adopted, women fared poorly in other directly elected offices. Therefore, additional amendments to the electoral system should

The overall results reveal the relative strength of the two largest coalitions — and underscore the need to cooperate.



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be considered to strengthen the representation of elected women in Kenya.

The absence of published detailed election results broken down at each level of tabulation to the polling station was unfortunate, as it removes the value of an important means for the public to verify results. The posting of a copy of polling station results is not only a useful means to publicize local results but is most effective when the public, parties, and observers can use the posted polling station results as check on how results are managed through the entire tabulation process. While some countries cite fears of retribution should polling station results be known, the general case for publication is much stronger. Of direct benefit to parties and candidates, access to this information will signal where they received support and where they did not, providing a potential guide to future efforts at public outreach. The principle of access to information, the objective of greater transparency in the results process, and the goal of securing more credible election results can all be served by advance planning and implementation of a complete results management system.

There were several important differences in the administration of the results process in 2013 compared to 2007 that likely contributed to a broad acceptance of the outcome of the elections.

1. There appears to have been a popular renewal of public confidence in the judiciary with the improved vetting of magistrates and the appointment of a trusted individual, Willy Mutunga, as chief justice of the Supreme Court. Though still in early stages, initial judicial reforms created a more credible dispute resolution mechanism that contributed to a peaceful election.
2. The IEBC systematically updated the results of the presidential election and less frequently the results of other types of elections with live public statements on TV and radio. Access to constituency and county tally centers was excellent—often including media, election agents, observers, candidates, and their supporters. Live media broadcasts showed IEBC returning officers reading out results at their respective levels and, where they declared winners, handing over certificates of election to the winning candidate. This approach to transparency is welcome and should be maintained at all levels.
3. The presidential candidates themselves demonstrated their commitment to the electoral process and independence of the IEBC's administration of the elections. They accepted the election results as credible and where they did not, as described in the next section, took their petitions to the appropriate legal channels.

Electoral Dispute Resolution

Kenya's judicial institutions and framework for managing electoral disputes met the country's obligations to provide citizens with the right to appeal in a timely and public fashion. Presidential election petition proceedings were held in a very professional and rigorous manner. The lawyers representing petitioners avoided making personal accusations, and Supreme Court judges kept the hearings in line with the highest standards of professionalism and integrity necessary for the conduct of electoral litigation. Although reform of Kenya's judicial system is a work in progress, the management of electoral disputes in the 2013 elections marks an important early success for the reforms that have been implemented thus far.

RECOMMENDATIONS

For future elections, The Carter Center makes the following recommendations:

To the IEBC

Voter Registration

- Voter registration could be more inclusive by improving popular awareness, extending the periods for both registration and public scrutiny, and the deployment of a greater number of registration kits.
- The voter registration effort should be extended to facilitate the full enfranchisement of prisoners and hospitalized voters.



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- The IEBC should refrain from using the “green book” to identify voters for any election as this manual register has not been stripped of its double entries and is a manual list of voters without the biometric data that provides the level of security set by the IEBC and requested by the Kenyan people.
- Measures should be implemented to improve registration in all regions and population groups where registration rates were well below average.

IEBC Management

- The tender and procurement processes and/or management team should be reviewed and revised to ensure the independence of the IEBC and transparency and absence of corruption in contracting for supplies, equipment, and services.
- The principal technology applications acquired for the 2013 elections (notably, biometric voter registration, the electronic voter identification device, and the system for electronic transmission of provisional results) should be reviewed with specific attention to the integration of technology management and the IEBC's other critical processes such as political party liaison, public information, logistics, and security.
- The structural organization of the IEBC should be reviewed with special focus on decision making and the publication of decisions, rules, and procedures.

Voter Education

- Voter education programs should be designed and conducted well in advance of any election. The IEBC's partnership with civil society organizations to conduct voter education was welcome but will be more effective if outlines and curricula are prepared in collaboration and in advance. The IEBC has a constitutional responsibility for voter education and should provide leadership in this regard.

Voter Identification

- Should electronic voter identification technology be retained for future elections, the IEBC should

do so only after a thorough assessment of lessons learned and a cost-benefit analysis that includes consideration of the high costs of the technology, staff training, and deployment of the equipment compared to the actual security provided to the voting system. If the electronic voter identification device is to be used again, logistical planning needs to be strengthened, especially to provide alternative ways to charge the device in areas where electricity is not widely available.

- The introduction of voter cards that are distinct from the issuance of identification used for other purposes should be considered, since it is well-established that difficulties of acquiring identification can lead to the disenfranchisement of women, pastoralists, and minorities.

Voting and Counting

- The procedures for the conduct of election day should be reviewed to avoid mistakes and contradictions and clarified for subsequent election manuals.
- The procedures for tabulation of votes should be established well in advance and be detailed so as to prevent inconsistencies in the processing of results.
- Polling stations with fewer than 100 voters should be merged with others to avoid wasting resources and to protect the secrecy of the vote.
- The number of voters per polling station should be reduced to 500 maximum. The streaming mechanism is too complex and confusing for voters who must appear in locations with many dozens of polling streams. The number of streams should be reduced at any one location or more locations created to avoid long queues and long waiting times to vote.

Tabulation and Results

- The IEBC is encouraged to provide detailed illustration of the layout of tally centers at constituency, county, and national levels with a clearly defined flow of materials and the responsibilities



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of election officials at each step. The procedures should also explain the review and audit of results by election officials to ensure adequate and transparent safeguards are in place. These procedures should be published well in advance and shared with all stakeholders.

- Access for elections agents and accredited observers should be accommodated at the constituency, county, and national tally centers so that they can adequately monitor the receipt, handling, and compilation of results. This will help to ensure the security and transparency of results and assist in detecting incomplete, inaccurate, or otherwise problematic tabulation forms and/or when administrative decisions at a higher level change the results that have already been released at a lower level.
- The IEBC should publish final official results from the polling station level through each phase of tabulation. Where results may not reconcile, for example because one or more polling station result was excluded from the tally for administrative or other reasons, this should be explained. Any discrepancies between the total number of votes cast across the six different elected offices should be explained.

To the Political Parties

- Change the calendar for the candidate nomination primaries in order to prevent party-hopping while ensuring due process is respected without jeopardizing the electoral calendar.
- Take all appropriate measures to strengthen the participation of women aspirants and candidates.

To the Government and Elected Representatives

- Review the electoral law and overall legal framework to ensure that all provisions and deadlines create a workable electoral calendar for the IEBC to implement.
- The 47 special seats for women, though a welcome measure, did not meet Kenya's constitutional obligation to ensure at least one-third of all elected

positions are filled by women. All political parties, especially those represented in the National Assembly and Senate, should work to reform the electoral law to meet this core commitment. Additional incentives could be provided to political parties to ensure a better representation of women in Parliament. For example, political finance legislation could provide financial incentives to parties in proportion to the number of women candidates.

- Introduce a political parties act that addresses the importance of equitable financial and other resources for political parties and candidates to create a more level playing field. Particular attention should be paid to campaign finance including possible public financing of parties, regulation of donations to parties, limits of campaign spending, and disclosure requirements.
- Based on an evaluation of the 2013 elections, assess whether or not modification of the electoral calendar is appropriate to either retain the conduct of all six elections on one day or whether separate election days are warranted.
- Establish and enforce a clearly defined campaign period.

To the Judiciary

- Continue the important reform process (e.g. strengthened vetting of magistrates) and establish clear performance targets to rebuild public confidence in the judiciary.
- Review the 2013 experience with electoral dispute resolution to generate a written record of best practice in electoral justice.

To the Security Forces

- Continue the initial improvements that have been implemented at the very top of the leadership hierarchy (e.g. public access and civilian review of key appointments) to re-instill the spirit of public service and accountability in the police force.
- Identify and address the challenges facing police in the conduct of their duties (e.g. conditions of work



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and wages, equipment and facilities) to provide incentives to individual officers to resist inducements from political actors, criminals, or other outside actors, especially during electoral periods.

- Enhance training in human rights and community policing for all members of the police force, with special reference to the intersection of electoral offenses and ongoing security concerns in Kenya.



APPENDIX A

ACKNOWLEDGMENTS

The Carter Center gratefully acknowledges the support of the organizations and individuals whose vital contributions enabled the electoral observation mission in Kenya. The Center thanks the United States Agency for International Development (USAID), Norwegian Resource Bank for Democracy and Human Rights, and the Department for International Development at the British High Commission in Kenya for their support. Their contributions enabled a sustained Carter Center election engagement in Kenya from January to April 2013.

The Center expresses its appreciation to the government of Kenya and the Independent Electoral and Boundaries Commission for inviting the Center to observe the elections. Carter Center observers reported good access and a warm welcome across Kenya from government and election officials, representatives of political parties, civil society organizations, and the people of Kenya.

The Center recognizes the efforts of the multiple international election observer groups with whom it collaborated on two joint statements as well as regular exchange of views on the electoral process. The Center also notes the vital importance of the Kenyan citizen observer organization, Elections Observation Group, which deployed long-term observers throughout voter registration, candidate nomination, and the campaign as well as more than 7,000 short-term observers in all 290 constituencies on election day. Not only did ELOG's efforts inspire confidence on the part of the Center about the capacities of citizen observers but their findings also provided an important register against which we could check the quality of our own observations.

The Center is grateful for the leadership of His Excellency Rupiah Banda, former president of Zambia, who served as delegation co-leader with Dr. John Stremlau, Carter Center vice president for peace

programs.

The Center also acknowledges the distinguished leadership of Stéphane Mondon, field office director in Nairobi. Pedro Teixeira served as manager of field operations, handling office and in-country operations and observer transport and accommodation. Logistics support was provided by George Warui, including crucial mission advance work with Mr. Teixeira. Steven Bowkett, security officer, designed and managed the security for a 60-member mission, including observers, staff, and mission leadership over extraordinary deployment distances. Mariusz Wojtan was the observer coordinator, responsible for orientation and debriefing of observers, and managed all of their reporting as well as deployment logistics. Nuur Sheekh provided political analysis to the mission. The Nairobi office was additionally staffed by Zamzam Abdi, Victor Gichuru, Ahamed Idriss, and Moses Muigai, all of whom worked ably in their capacities.

The Carter Center thanks all of its observers and, in particular, the long-term observers for their invaluable work in bearing the weight of providing political and logistics reports from areas throughout Kenya over the course of several months. These individuals worked in diverse and uncertain conditions, demonstrating a deep commitment to the success of the Carter Center mission and to the furthering of democracy in Kenya.

The project was managed by Associate Director Dr. David Pottie. A number of staff and interns provided crucial support to the mission including Clare Duffy, Megan King, Courtney Mwangura, Aliya Naim, Rebecca Nocharli, Jennifer Russi, and Tessa Stromdahl.

This report was compiled with the input of many members of the mission under the direction of Stéphane Mondon. David Carroll, Megan King, and David Pottie edited and prepared the final version of the report.



APPENDIX B

THE CARTER CENTER OBSERVATION DELEGATION AND STAFF

DELEGATION LEADERS

H.E. Rupiah Banda, Former President of Zambia
Dr. John Stremlau, Vice President, Peace Programs,
The Carter Center

DELEGATION

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Tomasi Kiryapawo, Uganda
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Ahna Machan, United States
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APPENDIX C TERMS AND ABBREVIATIONS

AFRICOG	Africa Center for Open Governance	KPU	Kenya People's Union
ARC	Alliance of Real Change	MRC	Mombasa Republic Council
CORD	Coalition for Reform and Democracy	NARC	National Alliance of Rainbow Coalition
ELOG	Elections Observation Group	ODM	Orange Democratic Movement
FORD	Forum for the Restoration of Democracy	PDP	People's Democratic Party
ICC	International Criminal Court	PNU	Party of National Unity
IEBC	Independent Electoral and Boundaries Commission	RBK	Restore and Build Kenya
IED	Improvised explosive device	TNA	The National Alliance
KANU	Kenya African National Union	UDF	United Democratic Forum
KNC	Kenya National Congress	URP	United Republican Party
KNDR	Kenya National Dialogue and Reconciliation	WDM	Wiper Democratic Movement



APPENDIX D STATEMENTS

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

Jan. 18, 2013

Carter Center Announces Election Observation Mission to Kenya

At the invitation of the Independent Electoral and Boundaries Commission and the welcome of political parties, The Carter Center has launched an international election observation mission for Kenya's March 4, 2013, elections.

The early deployment of long-term observers will allow the Center to assess pre-election preparations. The Carter Center also will monitor closely legal and political developments that may impact the election. A field office has been established in Nairobi to guide these efforts.

"The Carter Center hopes that this election observation mission will reassure the Kenyan people that their efforts to reform political institutions can succeed. Competitive and peaceful elections would be one more step in Kenya's transition away from politics of division and strife," said Carter Center Election Mission Field Representative Stephane Mondon.

The Center will deploy 14 long-term observers across Kenya to gain firsthand knowledge of the activities of

the election commission, political parties, civil society organizations, and the international community, as well as other domestic and international election observation missions. Their deployment coincides with the formal nomination of candidates.

These observers will be joined by an additional 30 members shortly before the elections. The Center will release periodic public statements on electoral findings, available at www.cartercenter.org.

The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by more than 40 election observation groups. Center assesses the electoral process based on Kenya's national legal framework and its obligations for democratic elections contained in regional and international agreements.



THE CARTER CENTER

OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

Feb. 21, 2013

Carter Center Pleased with Kenya Election Preparations, Urges Politicians and Citizens to Commit to Credible and Peaceful Elections

Carter Center observers in Kenya have found the electoral campaign generally peaceful thus far, and the Center urges all Kenyans to commit themselves to nonviolent participation in the electoral process.

The Center's observers report that Kenyans have been able to assemble freely and parties and candidates able to convey their messages to potential voters. The March 4 elections for president, Parliament, governors, and county assemblies will be the first held under the new constitution of August 2010. The legal framework, election commission, judiciary, and especially the presidential candidates, are under intense scrutiny following post-election violence in 2007.

In contrast with the chaotic internal primaries organized by a number of political parties, the Center's observers report that the Independent Electoral and Boundaries Commission has administered election preparations in a competent manner and has been responsive to the additional pressure to deliver peaceful and credible elections. Of particular note is the election commission's willingness to work with the judiciary during the pre-election period to strengthen Kenyan access to justice and rule of law.

The Carter Center is nevertheless concerned by a number of developments that could undermine the integrity of the electoral process. Among these are

the apparent exclusion of a number of youth, women, internally displaced people, and pastoralists from the voter register; shortcomings in voter education that have led many Kenyans to believe incorrectly that they will be using electronic voting machines; and the complex scale of managing polling, counting, and transmission of results for six ballot papers for different elected offices.

The Carter Center calls on political parties and candidates to abide by the electoral code of conduct and to reiterate their commitment to nonviolent participation in the electoral process and peaceful acceptance of the will of Kenyan voters. Furthermore, the Center calls on Kenyans to play their role in a peaceful election by not succumbing to political manipulation and violence, instead taking their complaints through the legal process to preserve peace and democracy.

The Carter Center launched its election observation mission in Kenya in January 2013 with the deployment of 14 long-term observers from 11 countries. They will be joined by 38 short-term observers from 19 countries to observe voting and counting. The mission will be led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau.

The Carter Center is observing the elections at



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the invitation of the Independent Electoral and Boundaries Commission and will provide an impartial and independent assessment of the electoral process to be made available to Kenyan public and the international community through periodic public statements, available at www.cartercenter.org. The Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's

observation mission is conducted in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005, and all its observers have signed the Independent Electoral and Boundaries Commission Code of Conduct for Election Observers. The Carter Center has observed 93 elections in 37 countries, including the 2002 elections in Kenya.



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THE
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The Carter Center International Election Observation Mission to Kenya's March 4, 2013, Elections

Pre-election Statement

Feb. 21, 2013

March 4, 2013, elections for president, Parliament, governors, and county assemblies will be the first held under the new constitution of August 2010. The legal framework, election commission, judiciary, and especially the presidential candidates, are under intense scrutiny following post election violence in 2007. In contrast with the chaotic internal primaries organized by a number of political parties, the Independent Electoral and Boundaries Commission (IEBC) has administered the electoral process thus far in a competent manner, including its management of candidate registration and cooperation with the judiciary during the pre-election period.

Carter Center observers report that a generally peaceful electoral campaign thus far has allowed Kenyans to assemble freely and for parties and candidates to convey their message to potential voters. The Center is nevertheless concerned by a number of developments that could reduce the integrity of the electoral process, including the exclusion of a number of youth and women from the voter register; shortcomings in voter education that have led many Kenyans to believe incorrectly that they will be using electronic voting machines; and the complex scale of managing polling, counting, and transmission of results for six ballot papers for different elected offices.

As election day approaches, The Carter Center calls on political parties and candidates to abide by the electoral code of conduct of the IEBC, the code of conduct for political parties, and to reiterate their commitment to nonviolent participation in the electoral process and peaceful acceptance of the will of Kenyan voters. Furthermore, the Center calls on Kenyans to play their role in ensuring a peaceful election by not succumbing to the political manipulation and violence that have undermined the electoral process in the past and never served the best interests of the Kenyan people.

The Carter Center launched its election observation mission in Kenya in mid-January 2013 with the deployment of 14 long-term observers from 11 countries. Closer to election day, they will be joined by 38 short-term observers from 19 countries to observe voting and counting. The mission will be led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau. The Center is in the Republic of Kenya at the invitation of the IEBC and will provide an impartial and independent assessment of the electoral process to be made available to Kenyan citizens and the international community through periodic public statements. The Carter Center makes its assessment based on Kenya's legal framework and its obligations for



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democratic elections contained in regional and international treaties.¹ The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the IEBC Code of Conduct for Election Observers.²

Introduction

The Republic of Kenya is preparing for its fifth elections since the re-establishment of multi party politics in 1991. The country has a longstanding history of ethnic fueled electoral violence, which culminated in 2007-2008 leaving more than 1,000 dead and over 600,000 internally displaced people. The 2013 elections represent a unique occasion for Kenya to turn away from past electoral violence. These elections will be the first to be conducted under the terms of the new constitution adopted by referendum in 2010, with a new electoral management body, the IEBC. The registration of 14.3 million voters and the organization of two by-elections in 2011 have reinforced public trust in the IEBC, however, shortcomings and subsequent delays in the procurement of registration kits and failure to include numbers of youth and women have cast shadows on the institution.

Legal and electoral framework

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national and international rights. The legal framework includes the rules found in the national laws of the country that regulate how all aspects of the electoral process will unfold, including electoral management, boundary delimitation, campaigning,

voter education and registration, voting operations, and counting and dispute resolution.

The electoral framework was completely renewed after the adoption of the constitution in August 2010. The Elections Act, the Independent Electoral and Boundaries Commission Act, and the Political Parties Act were adopted by the outgoing Parliament in 2011. While the legal framework provides solid grounds for genuine elections, the decision by the Supreme Court to postpone the application of the one-third quota of women in elective positions is a step back from the constitutional commitment of Kenya to ensure equal eligibility and participate in formulation of government policy as stated in the Convention on the Elimination of all Forms of Discrimination Against Women.³ The Carter Center regrets that the Kenyan Parliament failed to pass specific legislation to implement the quota providing not more than two-thirds of the members of elective public offices to be of the same gender guaranteed by Art. 81 a. of the Constitution. The Center also notes that the absence of campaign finance regulations reduces transparency in campaign spending and gives an unfair advantage to the wealthiest candidates.

Good practices in achieving elections that meet international standards advise that no substantial change to the electoral law should be made within six months prior to elections. Unfortunately, several amendments were made in this period, one of them withdrawing the obligation of party membership three months prior to party nomination. This allowed candidates

¹ Kenya has signed and ratified, amongst others: African Union (AU) Charter on Human and People's Rights, AU Convention on Combating and Preventing Corruption, U.N. International Covenant on Civil and Political Rights (ICCPR), U.N. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and U.N. Convention on the Rights of People with Disabilities (CRPWD), and U.N. Convention Against Corruption. United Nations Human Rights Committee, General Comment 25 on "Rights to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service" is persuasive upon Kenya.

² The Declaration of Principles for International Election Observation was adopted at the United Nations in 2005 and has been endorsed by more than 30 organizations including the AU, European Union, Commonwealth, Organization of American States, National Democratic Institute and Electoral Institute for Sustainable Democracy in Africa.

³ Ratified by the Republic of Kenya on March 9, 1984



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to switch parties at the last minute, opening the possibility of “party hopping” for losing aspirants and thus withdrawing an essential safeguard against fraud, manipulation, and antedating of nomination documents.

Deadlines and the electoral calendar

While an elaborate legislative framework was adopted by Parliament, critical electoral regulations were watered down to meet operational requirements. These modifications were allowed by reducing the time frame in which to amend the electoral framework from six month to four month prior to the elections.

- The voter registration period was reduced from 90 days before the elections to 60 days and the period for inspection of the voters register was reduced from 30 days to 14 days.⁴
- The requirement of submission of party membership list under section 28 of the Elections Act which was originally required to be done at least three months prior to the elections, was amended to 45 days before the elections.
- In addition, section 30 of the Political Parties Act was amended to reduce the deadline by which political parties must submit party membership lists to the registrar of political parties from 90 days before the elections to 60 days.
- However, the most controversial amendments were in relation to party hopping, where section 34 of the Elections Act was modified to reduce the three month party membership requirement to being a member on the day of submission to be appointed as

candidate. This amendment allowed party hopping until the day of candidate nominations which created unnecessary confusion and withdrew a positive element of political stability.

Although in a technical sense there have been limited cases of missed deadlines, amendments whose only objective is to accommodate delay in the system or for the political convenience of parties and candidates set a bad precedent and results in creating loop holes in the electoral process, putting unnecessary pressure on IEBC operations.

Political party primaries and candidates nomination process

In their nomination process, parties should respect the principles of genuine elections guaranteeing the free expression of the will of the electors.⁵ According to international law, equitable treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment are important to protecting the integrity of the democratic process.⁶ Kenya's international commitments state that women shall enjoy equal rights to men, and that in some cases a state may take special, temporary measures to achieve de facto equality for women.⁷ Political parties should also embrace the principle of equal opportunity for female candidates.⁸ The Constitution and Political Parties Act each require that a political party undertakes and promotes a free and fair nomination process in accordance with the party's nomination and election rules.⁹

The selection of candidates by political parties was publicly perceived as disorganized at best, marred with technical difficulties, persistent rumors of fraud, and

⁴ Sections 5 and 6 of Elections Act.

⁵ ICCPR Art.25 and General Comment No. 25

⁶ ACHPR, Arts. 2 and 13(1); U.N., ICCPR, Art. 25(b)

⁷ U.N., ICCPR, Art. 3 and U.N., Convention on the Elimination of all forms of Discrimination Against Women, Art. 3

⁸ CEDAW Committee, General Recommendation 23, para. 22

⁹ Constitution, Art. 91 and Political Parties Act, Sections 6(2)(e) and 21(1)(b)



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manipulation of results. The major political parties opted to have their nominations as close to the deadline as possible in order to prevent last minute party hopping. Far from having the expected result, moving the primaries very close to the IEBC deadline for submission of lists of candidates brought confusion to the candidate nomination process and pushed back the electoral calendar.

In addition to the political tactics and administration of the party primaries, The Carter Center is concerned about the reaction of many losing candidates in the primaries who in some cases responded with inflammatory rhetoric, incited demonstrations and in at least one occurrence turned on the IEBC outside of the official dispute resolution mechanisms.

Given the very tight electoral calendar, any delay presents potentially serious subsidiary effects. The late conclusion of dispute resolution from the primaries delayed the transmission of candidates' lists to the ballot papers printing company, thereby delaying the delivery of ballot papers. With the names of candidates having been recently published in the gazette, further complaints of candidates expecting to be on the list could lead to legal proceedings, further disrupting the elections in several constituencies.

ELECTION PREPARATION AND READINESS

An independent and impartial election management body that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuinely democratic electoral process.¹⁰ It is also the responsibility of an election management body to take necessary steps to ensure that international human rights obligations apply to the entire electoral process. An election management body also should ensure accountable, efficient, and effective public administration as it relates to elections.¹¹

The Carter Center recognizes that efficient management of the 2010 constitutional referendum and subsequent by-elections have reinforced public confidence in the IEBC as well as raising expectations for the March elections. However, multiple problems induced by shortcomings in the procurement of essential election materials (biometric voter registration machines and ballot paper printing, for example) have cast a shadow on an otherwise high level of public trust. Management of public expectations will be an essential task for the IEBC as a recent poll indicated that many Kenyan voters were expecting to vote electronically, further confirming the need for more voter education. The swift delivery of results in the 2010 referendum has also set a precedent that will be difficult for the IEBC to match in a complicated election with six ballot papers and where the individual candidates have considerable political stakes.

Carter Center long-term observers report that preparations for the elections have been ongoing and appropriately timed in spite of the many procedural and logistical challenges facing the IEBC. Training has been reported to have been in line with the electoral calendar, although specific training on electronic poll books has not been delivered to national trainers due to the delay in delivery of the equipment. Non-sensitive election materials have largely been distributed on time, albeit sometimes unevenly, and IEBC personnel have been reported to be reactive and swift in addressing problems.

Carter Center observers have enjoyed full access to IEBC personnel in their area of responsibility. The Center encourages the IEBC to continue its cooperation with election observation missions in order to ensure the full transparency of the process at all levels and to strengthen public trust in the institution. The Center especially welcomes the presence

¹⁰ UNHRC, General Comment No. 25 para. 20

¹¹ Venice Commission, Code, Section II.3.1.c



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of non-partisan domestic election observers from multiple organizations, notably those organized by the Elections Observation Group (ELOG).

Due to the high number of voters per polling station and with six ballots to be cast, it is anticipated that it will take a significant amount of time for each voter to complete the polling process. Queue management by polling station officials will be important as only a smooth flow of voters will allow the IEBC to complete voting operations in the 11 hours authorized for election day. Although all voters in the queue at closing time are to be allowed to vote, The Carter Center encourages voters not to wait for the last minute to arrive at the polls. Delayed poll closings also have their own knock-on effects, slowing the transmission and tabulation of results.

The Carter Center observers report that the IEBC has been relying heavily on outside partners to implement their civic education programs. It also has been reported that voter education programs have lacked technical and financial support from the IEBC. A late start, along with deep rooted tribal customs, poverty, and illiteracy, also has impacted the efficiency of voter education programs.

Preparedness of the judiciary

Effective dispute resolution mechanisms are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.¹² The renewed public and political confidence in the judiciary provides effective opportunities for due process that did not exist in 2007. The Carter Center encourages all candidates and parties to use these instruments to seek a peaceful resolution of any election related disputes.

The Carter Center commends the judiciary for the decision to fast track all elections related matters presented to the courts and the establishment of a

Chief Justice of the Judiciary Working Committee on Election Preparations, which has been tasked with developing strategies to manage elections disputes efficiently and effectively.

The Carter Center also welcomes the finalization of training for all the judges, magistrates, and court registrars in election disputes and the adoption of Election Petitions Rules and Supreme Court Rules that provide instruments for faster determination of election disputes.

The efficient distribution of cases between magistrate's courts for county representatives; high courts for parliamentary, senatorial, governorship, and women representative contestants; and the Supreme Court for the presidential elections will be instrumental to a swift resolution of disputes. However, with only 70 high court judges in place and a period of six months to determine election disputes, along with the priority put on electoral cases, there is a strong likelihood that the courts will hold up on their normal work, potentially impeding access to justice for Kenyans. In a highly charged political atmosphere for election to entirely new offices, Kenyans will have to be patient just as the judiciary must ensure that full access to redress is enabled.

The Center notes the renewed public trust enjoyed by the judiciary and the role it has taken in solving disputes arising from candidate nomination. However, the high number of cases submitted to the courts has interfered with IEBC preparations and may delay the elections in some constituencies if unsuccessful primary candidates are reinstated in their right to stand through court decisions. The high number of petitions filed regarding disputed party primaries, IEBC procurement procedures, and the eligibility of some presidential candidates is a testimony of public trust in the judicial system, however it should not be

¹² Art. 40 SSRC Rules and Regulations on Polling, Sorting, Counting and Declaration of Results



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used as a tool to undermine or disrupt the electoral process. In addition, the high cost of petition could be a deterrent for voters and parties with the lowest financial capacity.

Conflict resolution mechanisms

The Carter Center welcomes article 84 of the Constitution and sections 51 and 110 of the Election Act, which require that all candidates and political parties comply with the Electoral Code of Conduct as prescribed by the IEBC and contained in the Second Schedule to the Election Act. The Electoral Code of Conduct is wide and comprehensive requiring every political party, candidate, and leader, chief agent, agent, or official of a referendum committee to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during an election period. The presence of two codes of conduct provides concrete guidance on acceptable political behavior and contributes to the creation of a campaign environment free from violence and hateful rhetoric.¹³

The Center is encouraged by section 110(6) of the Election Act under which, subject to the provisions of the Criminal Procedure Code, the IEBC can designate any of its officers to conduct any prosecution for an offense under the Election Act and the Electoral Code of Conduct. This provides prosecutorial powers to IEBC officials in order to deter electoral offenses and facilitate quick prosecution of offenders. Further, under section 7 of the Electoral Code of Conduct, the IEBC has a number of measures to resort to if there is a violation of the electoral code.

Enforcement of the Codes of Conduct will be a persistent challenge in the run up to the elections, especially if parties and candidates use the same

rhetoric and behavior that have prevailed during party primaries. The strong legal powers given to the IEBC can serve as strong deterrent to behaviors that could arm the electoral process. The Center encourages the IEBC to use its entire legal arsenal to ensure a peaceful and genuine election.

Failure to comply with the order of the commission in this regard can result in the prohibition of the defaulting party from participating in ongoing and future elections. The commission further may either of its own motion or in consequence of any report made to it, institute proceedings in the high court in case of any alleged infringement of the code. The high court may then cancel the right of such party to participate in the election concerned; and/or make an order disqualifying, in the case of a person who is a candidate, that person from being a candidate or deleting the name of that candidate from the list or lists of candidates concerned.¹⁴

Campaign environment

In addition to being open and transparent, a genuinely democratic election requires a campaign period in which rights such as freedom of opinion and expression, freedom of association, freedom of movement, security of the person, and access to information are respected and upheld by the election management body as well as by political parties and other electoral stakeholders.¹⁵ These are international obligations to which the government of Kenya has committed itself.

Carter Center observers report a generally peaceful electoral campaign thus far has allowed Kenyans to assemble freely and for parties and candidates to convey their message to potential voters. The Center observers have reported isolated cases of vandalism such as destruction of campaign posters. Campaign

¹³ IEBC, Electoral Code of Conduct and Political Parties Act, Political Parties Code of Conduct.

¹⁴ Section 11 of the Code requires that the High Court ensure that these proceedings are dealt with in priority to all other matters brought before it and that the decision of the court is given before the date of the election concerned.

¹⁵ U.N., ICCPR, Art. 9, 12, 19, 22; AU, ACHPR, Art. 6, 10, 12; AU, Convention on Corruption, Art. 9; ACHR, Art. 7(1), 13, 16, 22



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finance is provided to national political parties by public funding in proportion to the strength of their representation in Parliament or votes garnered in previous elections.

While the IEBC did not provide an initial date for the launch of the official campaign period, it did issue a notice on Feb. 11 to establish midnight on March 2 as the end date. Unfortunately, the absence of a fully defined official campaign period tends to penalize candidates and parties who lack the resources to run a long and expensive campaign.

The Center welcomes the organization of two presidential and deputy presidential debates that gives the candidates an opportunity to air publicly their positions and differences in a peaceful manner.

However, there are other limitations to the goal of a level playing field based on financial resources and access to media. Several Kenyan organizations have reported on the particular disadvantages facing women candidates who frequently lack the resources of male contenders and who often do not receive help from their parties. The Center found that high candidate nomination fees can create unreasonable obstacles to the right to stand for election with regards to international commitments.¹⁶

SECURITY

Too many Kenyans continue to lose their lives or face displacement through inter-communal and political violence. The police have a responsibility to serve and protect all Kenyans without prejudice and to investigate criminal activity.

The Carter Center is also concerned about the recent violence in some parts of the country, especially Tana River, Kuria, and Baringo, and displacement of people from these regions. This is likely to lead to potential

voter displacement, voter apathy, and disenfranchisement of voters.

The security of polling officials and materials, candidates, voters, and other stakeholders prior to and during polling day is paramount to the conduct of democratic elections. After the precedent created by the post electoral violence surrounding the 2007 elections, Kenya's security forces are expected to play an essential role in securing the process. The Carter Center understands that police intend to mobilize other uniformed services (prison services and the wildlife service) to release regular policemen from static duties. The Carter Center welcomes the plan to deploy two security personnel to each polling station while still enabling them to create reserves and quick reaction forces.

The Center encourages the police force to use non-lethal crowd control measures to secure the life of the citizens it aims to protect. The presence of policemen, while acting as a deterrent, should not influence voters in any manner while exercising their democratic choice.

RECOMMENDATIONS

The Carter Center international election observation mission to Kenya offers the following recommendations to support the conduct of credible elections. The Center will offer additional observations and recommendations in subsequent public reports:

To the IEBC:

- Make a final push in the week before the elections to ensure that Kenyans understand where and how to cast their vote.
- Ensure procedures are well established in advance for the counting and tabulation procedures and that these are communicated to candidates and parties.

¹⁶ ICCPR, Art. 25 and General Comment 25



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- Take special care to ensure the proper training of all polling station officials to manage a complex six-ballot polling experience for voters. Additional attention should be given to closing and counting procedures, which are often neglected and suffer in the wake of pressure to staff and deploy thousands of election workers.
- Ensure that sufficient election staff members are deployed to polling centers, especially the ones with the highest numbers of voters.

To the candidates and political parties:

- Continue to respect and reinforce the Code of Conduct and encourage fair practices among party supporters.
- Spread the message among supporters that the election results may take some time to be tabulated and announced by the IEBC. While party agents have the right to serve as an important check on polling station results they should also remember that the election unfolds across more than 33,000 polling stations, not just the one location where they are stationed.
- Use the established means for any election complaints that may arise and take every measure to calm their supporters and call for patience.

To the media:

- Uphold the responsibility to report without bias on the conduct of all aspects of an election but not to become political actors themselves.

- Journalists, editors, and media owners understand the technical and political activities they are reporting and remain aware of the impact of that reporting, especially as partial results become available.

To the police:

- Ensure that the conduct of the polls runs smoothly and that voters may go the polls without fear, even though the national police service is in the midst of transformation and faces many pressures.
- Leadership and officers must remain mindful that serve the people of Kenya and not any one political party or interest.

To the judiciary:

- Reinforce the rule of law and to dispense justice without prejudice on behalf of all Kenyans.
- Implement the law in the knowledge that resolution of election disputes carries a special burden given the stakes and consequences of elections.

To the people of Kenya:

- Honor and respect those who have lost their lives or been displaced by political violence in the past, and recall that all Kenyans have the right to choose their elected representatives without fear of reprisal or intimidation. It is the conduct of genuine elections themselves that enable the people to hold their leaders accountable.



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NEWS

THE
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ONE COPENHILL ATLANTA, GA 30307

Feb. 27, 2013

Former Zambia President Rupiah Banda to Lead Carter Center Delegation for Kenya's Election

The Carter Center announced today that former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremmler will co-lead the Center's 60-person delegation representing 29 nations to observe Kenya's March 4 elections.

President Banda and Dr. Stremmler will meet with key stakeholders including the Independent Election and Boundaries Commission, political parties, independent candidates, civil society organizations, and the international community, and will observe polling, counting, and tabulation on election day.

The Carter Center urges the Independent Election and Boundaries Commission to address technical issues that arose during the recent polling simulation to ensure a smooth voting process on election day. The Center further encourages political parties, movements, and independent candidates to demonstrate commitment to the ideals of democracy and appeal to their supporters to respect the rule of law and the codes of conducts signed by candidates and political parties.

The Carter Center's long-term observers have been deployed since January and are now joined by short-term observers to be briefed in Nairobi and deployed ahead of election day. The Center is observing Kenya's election at the invitation of the Independent Election and Boundaries Commission and the welcome of political parties.

The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by 37 election observation groups. The Center assesses the electoral process based on Kenya's national legal framework and its obligations for democratic elections contained in regional and international agreements.

The Center's previous statements on the Kenyan election process may be found at www.cartercenter.org. The Center will release its preliminary findings on the Kenya election shortly after the process concludes.



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OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

NEWS

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ONE COPENHILL ATLANTA, GA 30307

March 6, 2013

Carter Center Congratulates Kenyan Voters on Peaceful Election, Urges Patience While Results Processed

The Carter Center finds that Kenya's polls were well-conducted in a peaceful environment. Voter turnout appears to have been high. The Independent Electoral and Boundaries Commission has made important commitments to improve the transparency of the counting and tabulation of votes. Although partial provisional results are available, the full tabulation of results is ongoing.

The Center regrets the security incident at the coast that happened on the eve of the election day that led to the unfortunate loss of lives and the death of an IEBC agent during the course of his duties. Their extreme sacrifice is a constant reminder of the importance of peace and security in the conduct of democratic elections.

The Center has observed a high number of rejected votes and appeal to the IEBC and other stakeholders to make address this in the short term.

At this stage, with the tabulation of final results still underway, it is too early to provide an overall assessment of the electoral process. Carter Center observers will continue to observe the tabulation process, dispute resolution, and the post-election environment.

In the meantime, political parties and their leaders should refrain from releasing one sided figures or making inflammatory statements. Instead we advise them to cooperate with the IEBC and appeal to their supporters to remain calm, refraining from any action

that may lead to compromising security the elections in general and the Kenyan people in particular.

The Center encourages political parties and candidates to continue to exercise patience as the results process continues and to bring any complaints they may have to the appropriate legal channels.

The Center launched its election observation mission in Kenya in January 2013 with the deployment of 14 long-term observers from 11 countries. They were joined by an additional 38 short-term observers from 19 countries to observe voting and counting. The mission was led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau. On election day, Carter Center observers visited 265 polling stations in 34 counties.

The Carter Center is in Kenya at the invitation of the Independent Electoral and Boundaries Commission and will provide an impartial and independent assessment of the electoral process to be made available to Kenyan citizens and the international community through periodic public statements. The Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the Independent Electoral and



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Boundaries Commission Code of Conduct for Election Observers.¹ The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.

This statement is preliminary; a final report will be published in the coming months following the conclusion of the electoral process. The full preliminary statement is attached.



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

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The Carter Center International Election Observation Mission to Kenya's March 4, 2013 Elections

Statement of Preliminary Findings and Conclusions

On March 4, 2013, Kenya held its fifth elections since the re-establishment of multi-party politics in 1991. The country has a longstanding history of ethnic fuelled electoral violence, which culminated in post-election violence in 2007 and 2008, leaving more than 1,000 dead and over 600,000 internally displaced people. The March 4 elections were the first conducted under the terms of the new constitution adopted by referendum in 2010, with a new electoral management body, the Independent Electoral and Boundaries Commission (IEBC).

The Carter Center launched its election observation mission in Kenya in January 2013 with the deployment of 14 long-term observers from 11 countries. They were joined by 38 short-term observers from 19 countries to observe voting and counting. The mission was led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau. On election day, the Center's observers visited 265 polling stations in 34 counties. Carter Center observers will continue to observe the tabulation process, dispute resolution, and the post-election environment.

The following observations are preliminary and may be amended as The Carter Center continues its assessment. Any commentary or recommendations offered

in the spirit of support for genuine democratic elections in Kenya.

LEGAL AND ELECTORAL FRAMEWORK

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national and international rights. The legal framework includes the rules found in the national laws of the country that regulate how all aspects of the electoral process will unfold, including electoral management, boundary delimitation, campaigning, voter education and registration, voting operations, and counting and dispute resolution.

The Republic of Kenya has committed itself to a number of regional and international treaties through which it has obliged itself to follow key human rights standards.¹ Kenya has ratified a series of international and regional human and political rights instruments that are relevant to the electoral process. These treaties include the Convention of the Political Right of Women, (CPRW), the International Convention on the Elimination of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights, (ICCPR), the Convention of the Elimination of all Forms of Discrimination Against Women (CEDAW), the African Charter on Human and

¹ Art. 2(6) of the Constitution of Kenya states that: "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."



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Peoples' Rights (ACHPR), the African Union Charter on the Principles Governing Democratic Elections in Africa (AU CPGDEA), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ACHPR-PW), and the Convention on the Rights of People with Disabilities.

The Elections Act, the Independent Electoral and Boundaries Commission Act, and the Political Parties Act provide solid grounds for genuine elections. In addition, with two codes of conduct, the legal framework provides for a solid framework for a peaceful campaign. Effective access to the legal framework is made difficult by the variety of acts and the profusion of subsidiary legislation, published in the Kenya gazette without further dissemination. The legal framework could be made more accessible to stakeholders and especially voters by a compilation of its regulations.

In contrast with 2007 elections, the current legal framework provides for a credible dispute resolution mechanism thanks to the reform of the judiciary, described in more detail below.

The Carter Center regrets the decision not to apply the two-thirds gender quota, which represent a step back from the constitutional commitment of Kenya to ensure equal eligibility and participate in formulation of government policy as stated in the Convention on the Elimination of all Forms of Discrimination Against Women.²

The Center also notes that the absence of campaign finance regulations reduces transparency in campaign spending and gives an unfair advantage to the wealthiest candidates.

Good practices in achieving elections that meet international standards advise that no substantial change to the electoral law should be made within six months prior to elections. Unfortunately, several amendments were made in this period, one of them withdrawing the obligation of party membership three months prior to party nomination. This allowed candidates to switch parties at the last minute, opening the possibility of "party hopping" for losing aspirants and thus withdrawing an essential safeguard against fraud, manipulation, and antedating of nomination documents.

The Center regrets the disenfranchisement of prisoners, whom in spite of a court recommendation to include them in the voter register, were not permitted to participate in the process.

ELECTION ADMINISTRATION

An independent and impartial electoral authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic election and that other international obligations related to the electoral process can be met.³

The constitution provides for the establishment of the IEBC under Article 88. After the enactment of the new constitution in 2010, one of the critical pieces of legislation enacted by the Parliament was the Independent Electoral and Boundaries Commission Act, which provided the process for the recruitment and selection of the commissioners to the IEBC.⁴

The Carter Center welcomes the introduction of new selection criteria for the recruitment of the IEBC. The recruitment of IEBC commissioners was handled

² Ratified by the Republic of Kenya on March 9, 1984

³ UNHRC General Comment No.25, para. 20

⁴ Internal Electoral and Boundaries Commission Act, Art. 5



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through multiple independent institutions, which was a departure from the selection of commissioners in the previous general elections. The process was spearheaded by the IEBC selection panel, which received all applications for the positions of IEBC commissioner. The president and prime minister then forwarded names to Parliament for approval. In spite of attempts at political interference at various points in the process, the process enjoyed a high degree of impartiality, which has enhanced the credibility of the IEBC with both political parties and the general public.

The constitutional responsibilities of the IEBC include the continuous registration of voters and revision of the voter's roll, the delimitation of constituencies and wards, the regulation of political parties process, the settlement of electoral disputes, the registration of candidates for elections, voter education, the facilitation of the observation, monitoring and evaluation of elections, the regulation of money spent by a candidate or party in respect of any election, the development of a code of conduct for candidates and parties, and the monitoring of compliance with legislation on nomination of candidates by parties.

The Center is concerned about the low voter registration in pastoralist areas of Kenya and appeals to the IEBC to devise better methodology of reaching nomadic communities in future.

CANDIDATES, PARTIES, AND THE CAMPAIGN ENVIRONMENT

The right of individuals to participate in public affairs, including through the establishment of and free association with political parties and participation in campaign activities, is protected by international principles and fundamental electoral rights.⁵ Equal treatment of candidates and parties during an election,

as well as the maintenance of an open and transparent campaign environment, are important to protecting the integrity of the democratic election process.⁶

The Constitution of Kenya also guarantees freedom of citizens to exercise their political rights under Article 38 and guarantees free and fair elections free from violence, intimidation, improper influence or corruption, and conducted by an independent body. Chapter VII of the Constitution of Kenya guarantees the representation of the people and covers critical areas of general principles for the electoral system, legislation on elections, registration as a voter, candidates for election and political parties to comply with code of conduct, and electoral disputes, amongst other issues.

The campaign ended on March 2 at midnight on a peaceful note. The last campaign rallies gathered numerous supporters and no clashes were observed. Kenyans were able to assemble freely while parties and candidates conveyed their message to potential voters. The Center's observers reported isolated cases of vandalism such as destruction of campaign posters. The Carter Center welcomed the organization of a public rally at Uhuru Park on Feb. 25 where all presidential candidates pledged to peaceful elections. The event gathered a big crowd of supporters and showed a strong moral commitment to a peaceful electoral process.

Campaign finance is provided to national political parties by public funding in proportion to the strength of their representation in Parliament or votes garnered in previous elections. Unfortunately, the absence of a fully defined official campaign period tends to penalize candidates and parties who lack the resources to run a long and expensive campaign. Financial resources continued to prevent a level playing field through the end of the campaign. While the wealthiest candidates

⁵ ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7(b); UNHRC, General Comments 25, para. 2

⁶ AU-ACHPR, Art.10(1); IPU, Declaration on Criteria for Free and Fair Elections Art.3(3)



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were campaigning using helicopters, others struggled to afford billboards, media space, and televised advertising.

Several Kenyan organizations have reported on the particular disadvantages facing women candidates, who frequently lack the resources of male contenders and who often do not receive help from their parties.

Occurrences of hate speech were reported on vernacular radio; however, the Center commends the majority of Kenyan citizens for their commitment to a peaceful electoral process reaffirmed on numerous occasions during the campaign. The Carter Center welcomed the organization of two presidential and vice presidential debates where all eight candidates exchanged their views on live television and 33 radio stations across the country.

PARTICIPATION OF WOMEN

State obligations to promote de facto equality for women derive, in part, from broader political obligations regarding absence of discrimination and the right of all citizens to participate in the public affairs of their country regardless of gender.⁷ Through ratification of international and regional treaties, Kenya has pledged to promote the political participation of women on an equal basis with men. It has also made specific provision for the rights of women in the 2010 constitution.⁸

In spite of a legal framework providing for a solid set of rules to enhance women participation in politics, The Carter Center observed a very low number of women competing for elective positions. While the Center welcomes the adoption of a quota system

that ensures an immediate representation of women in Parliament, rather than empowering women to fully engage in the political process as candidates and elected representatives, the reserved seats for women have served to segregate female candidates and to bar them from standing as candidates for any other seat in Parliament.

Just one of the eight aspirants for the presidency is a woman. Only 167 women ran among several thousand candidates for the 290 elected seats in Parliament. Seven women are in the race for the 47 governor seats and 17 are running for the one of the 47 Senate seats. The majority of women candidates competed for the reserved seats in the National Assembly with 403 candidates vying for the 47 seats.

In spite of numerous dispositions aimed at ensuring a better representation of women in public office, The Carter Center regrets the undermining of the essential component of a modern society that is the promotion of women's representation in elective positions. The Political Parties Act alone contains three significant articles focusing on gender equality in both party and government composition, however, their existence has failed to translate to higher political representation or participation by female candidates.⁹

MEDIA

International obligations related to the media and elections include freedom of expression; opinion; and the right to seek, receive and impart information through a range of media.¹⁰ While The Carter Center did not conduct comprehensive media monitoring, it offers the following observations on the overall media framework.

7 U.N., Convention on the Elimination of all forms of Discrimination Against Women, Art. 3

8 Constitution of Kenya 2010, Art. 59 (2)(b)

9 Art 7.2,(c), Art 25.2(b), 91(f), Art.100 of the Political Parties Act

10 U.N., ICCPR, Art. 19(2); United Nations Convention Against Corruption, Arts. 10(a) and 13(b); AU, Principles on Freedom of Expression in Africa, Art. 6



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The Carter Center observed very intense media coverage of the electoral campaign, mainly concentrated around the two parties that were considered frontrunners by pollsters. The attention given to the two main presidential contenders, CORD and Jubilee, and their financial capacity to occupy the media did not create a level playing field for the other candidates.

The numerous public opinion polls reported during the campaign prepared the Kenyan people for a potential runoff and a very close race, inciting the media to focus even more on the two main presidential candidates. Throughout the campaign, the national media focused on the presidential elections, leaving aside the crucial competition for national and local assemblies, which will play a major role in the country's future with the implementation of the new devolution system. The Center finds that more attention should have been given to the five other elections that took place on March 4.

The Carter Center regrets the focus given by international media on the risks of violence that did not reflect the peace oriented messages sent by candidates, political parties, and all stakeholders.

VOTING PROCEDURES

The quality of voting operations on election day is crucial to determining how closely an election falls in line with a country's democratic obligations.¹¹ A core obligation under international law is that elections shall be held by secret ballot, which is recognized as a means of ensuring that the will of the people is expressed freely, and that a cast ballot cannot be connected with a voter to avoid intimidation and political retribution. Kenya appears to have largely met this important obligation in the March 4 elections.

Carter Center observers visited a total of 265 polling stations on election day, where they observed the opening of the polls and the polling, closing, and counting procedures. Overall, Carter Center observers reported strong voter turnout and that the process was well conducted by IEBC officials. Polling station staff generally performed according to procedures with a rating of good or very good in more than 90 percent of stations visited.

Polling operations throughout the day, including counting, were performed in a largely peaceful atmosphere. Two serious incidents of violence with multiple deaths seriously marred election day in the coast region and forced the relocation of a constituency tally center.

For the 2013 elections, there were approximately 32,400 polling stations with a significant variance in the number of voters per polling station. Some 50 percent of polling stations had more than 400 voters and many large polling centers were established, often as a single polling station with many "streams." It appears that the high number of voters at some polling locations is attributable to the delayed voter registration period while the electoral law also required the IEBC to gazette the number of polling stations 90 days before the elections (and before the voter register was finalized). One consequence was that while the IEBC sought to limit most polling stations to fewer than 1,000 voters, many locations felt the pressure of several thousand people trying to enter through a single gate or other control. The result was incredibly long queues. Kenyans withstood these long lines from early morning through the heat of the day and many voters waited six or more hours to vote. While Kenyans did so with great patience, the imposition of this waiting time is unreasonable and the IEBC should take steps to reduce this and establish more voting

¹¹ U.N., ICCPR, Art. 25; ACHR, Art. 23; U.N. UDHR, Art. 21



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locations, improved queue management with more polling staff, or other measures. In future elections, the IEBC should consider reducing the number of registered voters per polling station to facilitate polling operations and counting.

The official hours of voting were 6a.m.–5p.m. Polls that opened late were to remain open for 11 hours, and all polling stations were to allow the last voter in line at the time of closing to cast their ballot. Carter Center observers reported that 75 percent of polling station openings occurred by 6:30 a.m. Nearly all polling station areas were free from campaign materials and the appropriate number of security personnel was on hand and behaved accordingly.

The March 4 elections were the first to use the electronic voter register, requiring each polling station to have a functioning electronic voter identification (EVID) device to conduct biometric voter identification. However, Carter Center observers found that while polling workers were adequately trained on how to use the machines many EVIDs malfunctioned or were not provided with an adequate power supply to maintain function for all 11 hours of voting. In 41 percent of polling stations visited by Center observers these electronic devices were not operating. This failure resulted in some confusion regarding the voters list which was further compounded by some 35,000 voters being included in the paper registry but not in the biometric system.

Polling stations also were issued with printed voter lists including photographs. Fortunately, polling station staff quickly reverted to the paper register to keep the voting process moving. While the technical difficulties and voters list confusion significantly slowed the voting process in certain areas, voting was able to continue and voters were not reported to be disenfranchised.

The IEBC is commended for its efforts to acquire, produce, and distribute both sensitive and nonsensitive election materials. Carter Center observers found that 95 percent of polling stations visited had all necessary materials by the time polling stations were to open at 6 a.m.

Carter Center observers noted that in some 20 percent of locations visited, the layout of the polling station and placement of the voting booth, particularly those in stations with limited space, could have compromised the secrecy of the vote. However, in these cases Carter Center observers did not report serious concerns about violations of ballot secrecy or incidents of intimidation or concern among voters.

According to public international law, all people have the right to participate in the public affairs of their country.¹² This includes the right of citizens to participate in non-governmental organizations as well as the right of citizens to participate in citizen observer organizations and contribute to voter education efforts. Through these means, civil society can actively play an essential role in upholding an electoral process that is accountable and in which all participants can have confidence.

Political parties and independent candidates' agents from more than one party were present at almost all of the polling stations observed. Very few polling station complaints were recorded officially. Domestic observers were also prevalent at 60 percent of polling stations. The Center also notes the impressive work of the Elections Observation Group, which released two rolling assessments on election day and implemented a parallel voting tabulation as an independent check on the counting process.

COUNTING

The accurate and fair counting of votes plays an indispensable role in ensuring the electoral process

¹² U.N., ICCPR, Art. 25; AU, ACHPR, Art.13



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is democratic and reflects the will of the voters. International and regional commitments indicate that votes be counted by an independent and impartial electoral management body whose counting process is public, transparent, and free of corruption.¹³

In the polling stations visited by Carter Center observers, closing and counting took place in a peaceful atmosphere and largely according to procedure. A significant number of counting operations did not reconcile the number of ballot papers properly, but otherwise most stations completed the appropriate results correctly. Party agents and/or observers signed the results declaration forms in nearly 100 percent of cases. In nearly a quarter of counts observed the results form was not posted, missing an important safeguard on the transparency of the counting process.

The Center has observed a high number of rejected votes and appeals to the IEBC and other stakeholders to address this in the short term. In the meantime, political parties and their leaders should refrain from releasing one sided figures or making inflammatory statements. Instead we advise them to cooperate with the IEBC and appeal to their supporters to remain calm, refraining from any action that may lead to compromising security of the elections in general and the Kenyan people in particular.

TABULATION

To promote transparency and reduce corruption, the IEBC has followed international best practice by providing party agents with signed copies of the polling station results. Polling station tallies were posted at the completion of the count and presiding officers were to transmit the presidential results directly to the national tally center via an electronic results system designed for use via mobile handset. In theory, every polling station result for the presidential election would have been transmitted to the national

tally center once counting was completed on election night. Media and the public also have direct access to this feed, an impressive commitment to transparency and providing an important means to get provisional results into the public domain quickly. Unfortunately this has not been the case and while a significant number of results (representing some 40 percent) were posted within 24 hours of the close of polls, the majority were not.

The legal official results are on paper tally sheets from each polling station and these are to be transported securely to the 290 constituency tally centers, where once again they are to be available for scrutiny of party agents and observers and publicly posted. At the time of this statement, Carter Center observers report that this process has largely occurred without problem. Once completed at the constituency level, presidential tallies are to be delivered directly to the national tally center for final compilation by the IEBC.

Meanwhile, the remainder of the tabulation process will continue for the other elections and move up the chain to the 47 county tally centers. The Center hopes that political parties and observers will continue to follow the tabulation process to its conclusion to ensure that clear, detailed results by polling station are recorded and confirmed. Carter Center long-term observers will remain deployed to the completion of the results process.

The detailed, written procedures and guidelines for the organization and processing of polling station results have not been made available by the IEBC to the Center. General procedures were published but while the tally process appears to have been well-conducted thus far, written procedures are essential in the event of any election disputes that may arise. In future elections, the IEBC should strive to release procedures earlier.

¹³ African Charter, Art. 17(1); UNHRC General Comment 25, para. 20; U.N. Convention Against Corruption, Art. 1819



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The Center encourages political parties and candidates to continue to exercise patience as the results process continues and to bring any complaints they may have to the appropriate legal channels.

THE JUDICIARY

Impunity within the justice system undermined the rule of law and underscored the need for urgent corrective measures to prevent a crisis similar to what Kenya experienced in the last elections. In 2011, the Vetting of Judges and Magistrates Act was passed by Parliament, establishing the Judges and Magistrates Vetting Board to vet the suitability of all judges and magistrates who were in office on the effective date of the new constitution. The work of the board has resulted in a clean-up of the judiciary with judges whose qualifications and integrity were questioned being dismissed from service.

In addition to the vetting process, the new constitution provided for a deep reform of the judiciary system as a whole. The Supreme Court has the highest jurisdiction in the country, followed by the Court of Appeal, high courts, Magistrate's Courts, and other Subordinate Courts. The appointment and dismissal of judges and magistrates, vested by an independent Judicial Service Commission, was an essential step to renew the trust of Kenyan citizens in their judicial system. The renewed judiciary and legal framework provides a credible dispute resolution mechanism that renders unjustifiable the use of violence as a tool to contest election results.

The efficient distribution of cases between magistrate's courts for county representatives, high courts for parliamentary, senatorial, governorship, and women representative contestants, and the Supreme Court for the presidential elections will be instrumental to a swift resolution of disputes. However, with only 70

high court judges in place and a period of six months to determine election disputes, along with the priority put on electoral cases, there is a strong likelihood that the courts will be forced to prioritize electoral disputes over their normal work, potentially impeding access to justice for Kenyans. In a highly charged political atmosphere for elections to entirely new offices, Kenyans will have to be patient just as the judiciary must ensure that full access to redress is enabled.

ELECTORAL DISPUTE RESOLUTION

Efficient electoral dispute mechanisms, including, as necessary, the provision of a fair and public hearing before a tribunal, are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.¹⁴ The Carter Center welcomes the fast tracking of all elections related matters by the judiciary and the establishment of the Judiciary Working Committee on Election Preparations by the chief justice to develop strategies to efficiently and effectively manage elections disputes. The Center also commends the special training received by all judges, magistrates, and court registrars to handle elections offences and disputes. The judiciary's adoption of the Election Petitions Rules and Supreme Court Rules on Presidential Election Petitions enhances the transparency and credibility of the institution while providing stakeholders with clear rules for the settlement of disputes. The Carter Center also commends the judiciary for having published the rules governing electoral petitions in the newspapers, making them clear and accessible to all stakeholders.

In the period building up to the elections, the judiciary addressed multiple cases directly affecting the electoral process. These included all the matters arising from the delimitation of electoral units at the constituency and ward levels and questions on

¹⁴ ICCPR, Art. 2(3), UNHRC, General Comment No. 32, para. 18



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the election date. A number of cases relating to the procurement process of the IEBC and one against international observers also were filed and concluded before the elections.

Of significance to note is the case on procurement of ballot papers filed and concluded a few days before the elections. This case presented a tense period for the voters as its determination had significant impact on the IEBC meeting critical operational deadlines. A recent decision of the court was given in regards to the integrity of a presidential candidate and his running mate on Feb. 15, 2013. The efficiency with which the courts have dealt with matters coming before it has

increased the credibility of the judiciary's ability to settle electoral disputes with impartiality.

The Carter Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the IEBC Code of Conduct for Election Observers.¹⁵ The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.

¹⁵ The Declaration of Principles for International Election Observation was adopted at the United Nations in 2005 and has been endorsed by more than 30 organizations including the AU, European Union, Commonwealth, Organization of American States, National Democratic Institute and Electoral Institute for Sustainable Democracy in Africa.



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NEWS

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ONE COPENHILL ATLANTA, GA 30307

April 4, 2013

The Carter Center Finds Kenya Election Results Reflect Will of Voters

The Carter Center finds that in spite of serious shortcomings in the Independent Electoral and Boundaries Commission's (IEBC) management of technology and tabulation of final election results, the paper-based procedure for counting and tallying presented enough guarantees to preserve the expression of the will of Kenyan voters.

The Center congratulates Uhuru Kenyatta on his election as the next president of Kenya, and praises outgoing Prime Minister Raila Odinga for taking his concerns with the conduct of the election to the Supreme Court and accepting their ruling, which upheld the final results announced by the IEBC on March 9. The presidential election petition proceedings conducted by the Supreme Court were held in a very professional and rigorous manner.

The Carter Center finds that several key areas related to the tabulation of results did not receive sufficient attention. The initial release of inaccurate figures transmitted by electronic means challenged citizen confidence in the IEBC. A lack of transparency in the national tally marred the final stages of the process. Party agents and observers were unable to observe these proceedings adequately, and the Center hopes that future tabulation processes will be organized in manner that allows for appropriate observer access.

While the IEBC met its constitutional obligation to publish final results within seven days of the March 4 election, the Center regrets the IEBC's continued unwillingness to publish results by polling station, thereby missing an additional opportunity for the public

to confirm that their choice was accurately recorded and reported.

"These realities point to the need for continued citizen vigilance and government acceptance that a vibrant civil society is key for Kenya's democratic development," said Carter Center Vice President for Peace Programs Dr. John Strelau.

The 2013 elections presented the Kenyan people with their first opportunity to exercise their rights under the new constitution and to elect representatives to new bodies at the national and newly-created county level. This experiment in democracy and devolution of authority is a work in progress, and the Center hopes that all Kenyans will work together to strengthen democratic institutions.

A full statement is attached for more details on the Carter Center's findings. A final comprehensive report of the Center's overall assessment of the elections will be published in coming months.

The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya. The Carter Center's 60-member delegation was in Kenya at the invitation of the IEBC. The Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005. The Center assesses electoral processes based on states' obligations for democratic elections contained in their regional and international commitments and in their domestic legal framework.



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CARTER CENTER



The Carter Center International Election Observation Mission to Kenya

Post-election Statement on Tabulation and Announcement of Final Election Results April 4, 2013

Introduction

On March 9, Ahmed Issack Hassan, chairperson of the Independent Electoral and Boundaries Commission (IEBC), announced the results of the presidential election, declaring Uhuru Kenyatta of The National Alliance (TNA) elected with 50.07 percent of the valid votes, ahead of his main challenger, Raila Odinga of Orange Democratic Movement (ODM), who garnered 43.3 percent of valid ballots cast. The tabulation of final results for parliamentarian, senator, female representative to Parliament, county governor, and county assembly representative also had been completed at constituency and county level. The final turnout figures for the presidential election showed that over 86 percent of registered voters turned out to cast their vote.

The Center's observers visited 40 constituency and county tally centers. The Carter Center finds that several key areas relating to the tabulation of results did not receive sufficient attention from the IEBC. The release of inaccurate figures from the electronic transmission of results and lack of transparency of the national tally marred the final stages of the process, however, the Center notes that in spite of discrepancies in early numbers released to the public, the IEBC managed to secure final results within the constitutional period of seven days. The Center welcomes the publication of results forms 34 and 36 on the IEBC website, although most of them were not effectively accessible, and regrets the IEBC's continued

unwillingness to publish results by polling station.

In view of an electoral process marred by technological and operational failures, The Carter Center congratulates the Kenyan people for having kept the peace in spite of suffering very long queues on election day, receiving inaccurate electronic results and information on spoiled votes, having not been provided with a secure electronic voter identification system, and being presented with uneven turnout figures on Forms 36. The IEBC should conduct an internal review of its handling of the voter register and an audit of its tally procedure in order to avoid these deficiencies in future elections. Despite serious shortcomings of the IEBC's management of technology and release of information, The Carter Center finds that the paper-based procedure for counting and tallying presented enough guarantees to preserve the expression of the will of Kenyan voters.

Failure of Electronic Transmission of Results

Upon completion of the count at polling stations, the presiding officer was to key in the results on a handheld device that transmitted the information to a central server at the IEBC's national tally center in Nairobi. The IEBC's electronic transmission of results system was set up to display provisional results as they arrived without any filter or verification of incoming figures from the polling stations. In an effort to make the provisional results process transparent, the media



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received these figures simultaneously. The information displayed was often inaccurate, displaying sums that did not match numbers on the screen and changes that were made overnight.

Two controversies in particular were created by the unchecked display of provisional results. The first originated from the display of more than 300,000 rejected ballots on March 5 that was reduced overnight to 30,000. The IEBC wrongly attributed the high number of rejected ballots on March 5 to the complexity of a simultaneous vote for six different positions, only later to state that the original high number was the product of a server malfunction that multiplied spoiled votes by a factor of eight. This controversy signaled an inadequate handling of numbers by the IEBC and undermined confidence in their capacity to tally final results with accuracy. The second controversy was created by the IEBC's other March 5 announcement that rejected votes would be factored into the total sum of votes cast, which served as the basis for calculating the 50 percent threshold for the presidential election. This last-minute interpretation of the definition of "votes cast" in Article 138(4) of the constitution should have been taken well in advance and shared with stakeholders in order to avoid the confusion that followed this decision on such a crucial issue.¹

In the 2010 constitutional referendum, the use of an electronic data transmission system made the results available within 48 hours and strengthened public confidence in the IEBC. Since that referendum, technology has been used in biometric registration of voters, fingerprint scans at polling stations on election day to identify voters, and electronic transmission of provisional results from polling stations. In the use of

electronic voter identification and electronic transmission of results, reliance on technologies that were only partially successful during the mock election exercise threatened to undermine the very trust they were designed to enhance. Although more thorough self-assessment by the IEBC and the collection of observer statements will hopefully yield lessons for the conduct of future elections, it appears that some of the problems encountered by the IEBC could have been avoided by using simpler, more reliable, and less costly solutions.

Conflicting Definitions of a Rejected Ballot

Another definitional issue further clouded the understanding of rejected votes. Rejected ballots were defined in different ways depending on which IEBC document was referenced. In the IEBC Election Manual, rejected ballots are defined as: a) ballots that were not stamped in the back, b) votes given for more than one candidate, c) uncertainty for whom the vote is cast, d) ballots that had different serial numbers than those issued to the polling station, and e) unmarked ballots. However, in the IEBC polling-day guide for election officials, rejected ballots are defined as a) unofficial ballot papers, b) those for which the intent of the voter was not clear, or c) the voter could be identified, thus breaching the secrecy of the vote. The existence of two separate definitions of invalid votes created a double standard for the invalidation of ballots and undermined the principle that the vote of one elector should be equal to the vote of another.²

Tabulation of Results

Tallying is an integral and important phase of the electoral process that ensures the will of voters is accurately and comprehensively reflected in the final results.³ The IEBC procedures required that tallying

¹ "A candidate shall be declared elected as President if the candidate receives more than half of the votes cast in the election and at least twenty five per cent of the votes cast in each of more than half of the counties."

² General Comments of the HRC on Art. 25 of the PIDCP

³ International Covenant on Civil and Political Rights, Art. 25(b); AU, Declaration on the Principles Governing Democratic Elections in Africa, Art. 1



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take place at the constituency and county level for all elections, and then be transmitted to the national level for final tallying and compilation of results of the presidential election. Upon completion of counting at polling stations, the presiding officer compiled and displayed result forms 34 and 35 respectively for presidential, national, and local elections. The tally forms, ballots, ballot boxes, and other sensitive materials were then collected and brought to the constituency tally center by the presiding officer, where they were inspected by election officials under the responsibility of the returning officer in the presence of party agents and observers.

At the constituency tally center, the returning officer completed Form 36 for each election, providing total votes for all polling stations in that constituency and released the results for county assemblies and members of Parliament. Forms 36 were then delivered to the county tally center for governor, Senate members and reserved women seats in the National Assembly and to the national tally center for the presidential election. At the county level, the returning officer released the results for senator, governor, and women's representative to Parliament.

At the polling station level, Carter Center observers reported that nearly 100 percent of stations visited had party agents present, and that complaints were submitted in only 4.2 percent of the cases, indicating that overall, IEBC personnel were considered by party agents to be compliant with procedures. In 95 percent of the occurrences observed, tally workers understood their responsibilities, and subsequently Carter Center observers evaluated the overall tally process as good or very good in 95 percent of cases. The failure of electronic transmission of results was confirmed at constituency level, where the returning officer did not receive them in almost 60 percent of cases. However, the returning officers did receive all required forms

in more than 97 percent of the instances observed. Carter Center observers noted that the recovery of all the forms 34, 35, and 36 from returning officers took time, especially for the most distant constituencies. The Center's observers reported the rate of complaints submitted by party agents was higher at tally centers, reaching more than 12 percent.

On the evening of March 5, the IEBC stopped the electronic tally of provisional results after the server receiving them proved unable to compile incoming data. In a televised press conference, the chairman of the IEBC explained that the paper record of tabulation was the only legal base for final results; therefore electronic display of provisional results would be stopped. Although this had been the case all along, the IEBC's prior emphasis on the electronic results system created a false public impression that the tabulation process was being started over from scratch when the legal tabulation process always had been ongoing.

Publishing of Tabulation Procedures

The availability of election-related procedures to the public in a timely manner in advance of an election is considered to be best practice for election management bodies.⁴ The Carter Center regrets that the IEBC did not prepare an operational manual of procedures for the national tabulation exercise. The absence of detailed procedures did not enable election officials to consistently troubleshoot data entry errors or counting discrepancies. The IEBC is also encouraged to provide adequate illustration of the layout of tally centers, and a clearly defined flow of materials and responsibilities for different election officials. These procedures should be published well in advance, shared with all stakeholders, and also address the review and audit of results by election officials to ensure adequate and transparent safeguards are in place and provide space and access for party agents, observers and media. In

⁴ International IDEA, International IDEA Code of Conduct: Ethical and Professional Administration of Elections, p.12-13



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future elections, the Center recommends that the IEBC ensure that regulations and procedures regarding transmission, receipt, and data processing are communicated to electoral stakeholders well in advance and guarantee full access to the national tally center as stated in subsidiary legislation and recommend by both Kenya's international obligations and electoral good practices.⁵

Very brief descriptions of tabulation instructions were shared with Carter Center observers, but they appeared to be insufficient to guarantee the integrity and accuracy of numerical tabulation. Additionally, Carter Center observers did not have access to any written criteria for the placement on quarantine of mismatched results between forms 34 and 36 or other apparent errors on tabulation forms and the procedure put in place to troubleshoot them. The Center finds that while the tabulation process was open to observation at the constituency and county level, the national tally center did not provide enough transparency for observers or party agents to assess the overall integrity of tally of presidential results.

In spite of imprecise procedures, IEBC agents performed in an orderly manner and were able to compile results at the constituency and county level in due time. With more than 33,000 polling stations, an 86 percent turnout, and only a week to release the results, the potential for human error remained very high and led to discrepancies in the final results released by the IEBC.

Lack of Transparency and Tabulation of Results

One of Kenya's core obligations concerns promoting transparency in elections and other public processes.⁶ In order to ensure such transparency, accepted best

practice requires ballot tallies to be transmitted openly, and for the results to be published in a timely manner, including at the polling station level.⁷ To enable the public and other stakeholders to verify the accuracy of the results and to increase public confidence, it is important for the IEBC to publish the election results disaggregated by individual polling stations on its website. The Center remains concerned that several weeks after the elections detailed preliminary results disaggregated at the polling station level have not been published, as is widely recognized as a best practice to increase transparency.

The Carter Center commends the IEBC for setting up the national tally center in an accessible, centralized, and appropriate location. The IEBC allowed the press to set up on site and convened regular press conferences to update the public on the tabulation process. The public display of electronic provisional results at the time of their arrival at the national tally center was a positive measure toward transparency; however, as described above, the unreliability of the data displayed through the tabulation process undermined public trust in the IEBC. The dissemination of unchecked figures, especially the inaccurate number of rejected ballots, could have fueled a strong public reaction and damaged public trust in the ability of the IEBC to produce reliable election results.

Firsthand access to information is key in conducting credible and impartial observation, and The Carter Center regrets the IEBC decision to confine party agents and observers to the gallery of the national tally center, making effective observation impossible. In the absence of access to compiled documents and to IEBC personnel, the national tally of the presidential results forms was effectively rendered non-transparent

⁵ U.N., International Covenant on Civil and Political Rights, Art. 19(2)

⁶ U.N., United Nations Convention Against Corruption, Art. 13(a); AU, African Union Convention on Preventing and Combating Corruption, Art. 3(3)

⁷ CoE, Handbook for Observers of Elections, para. 4.6. EISA and Electoral Commissions Forum of SADC, PEMMO, p. 26



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for stakeholders and observers. In future elections, the Center strongly recommends that the IEBC design a tabulation process that accommodates both the security and transparency of results. This advance provision for transparency will be especially useful to the IEBC when incomplete, inaccurate, or otherwise problematic tabulation forms arise and/or when administrative decisions change the results that have already been released to the public at a lower level.

The Center also regrets the publication of provisional results while voting was still ongoing on March 5 in polling stations in Laisamis, Samburu, Kuresoi south, Nakuru east and west, Bahati, and Wagir.

Presidential and Legislative Results

On March 9, 2013, Uhuru Kenyatta was declared the fourth president-elect of Kenya by the chairman of the IEBC. Uhuru Kenyatta obtained 6,173,433 votes or 50.07 percent of the votes cast, reaching the required double threshold of 50 percent plus one vote and 25 percent of the votes in half of the counties in order to be elected in the first round of election. This margin was achieved with 8,418 votes, making it a very close victory. His closest contestant, Raila Odinga, received 5,340,546 votes or 43.31 percent of expressed votes. In third place, Musalia Mudavadi obtained 3.93 percent, and the other five presidential candidates each received less than one percent. Based on a preliminary analysis of the announced results, it appears that compared to Uhuru Kenyatta, Raila Odinga suffered from lower rates of voter registration and slightly lower turnout in his strongholds.

At least nine out of 10 registered voters cast their votes in 17 counties, translating to a massive turnout that shaped the eventual results. Official results from each of the counties indicate clear voting patterns in favor of one of the two leading contenders. In Uhuru Kenyatta's stronghold of central Kenya, voter turnout

was 94 percent in Nyandarua and Muranga counties and 93 percent in Nyeri county. For Raila Odinga, Homa Bay, Siaya, and Migori counties achieved voter turnout between 92 and 93 percent.

These figures reflect the critical regional and ethnic support for the two main contenders in the elections. Out of the 17 counties that reported the 90 percent-plus voter turnout, 11 were in Uhuru Kenyatta's strongholds, which show that his Jubilee Alliance did well in rallying followers in its strongholds to get out and vote. In contrast, the counties with the lowest voter turnout in the country were in some of Odinga's Coalition for Reforms and Democracy (Cord) strongholds, notably, Kilifi (65 percent), Mombasa (66.6 percent), and Kwale (72 percent).

In both the Senate and the National Assembly, Kenyatta's Jubilee Alliance has secured the majority of seats and has marshaled their numbers to win the coveted speaker's position of both houses. In the National Assembly, Jubilee commands a majority of 195 seats whereas Cord secured only 143 of the 350 seats. In the Senate, Jubilee and its affiliates secured the majority of 34 of the 68 seats while Cord managed 27 seats.

Only 193 women were candidates for parliamentary seats in the race outside of the reserved seats. Compared to the 12 elected members of the previous Parliament, 16 women got elected outside of the reserved seats resulting in the overall increase of women in Parliament, especially considering the augmentation of reserved seats for women in both chambers of Parliament from 10 to a total of 63 reserved seats. However, no women were elected as governor or senator, which shows that progress needs to be made in order to fulfill the condition that no more than two-thirds of elective public bodies' members should be of the same gender⁸ and

⁸ Art. 27 (8) and 21(b) of the Constitution



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to provide equal opportunities for women and men in the political sphere.⁹ Of the seats reserved for women, both Jubilee and Cord won 23 and Amani won one. In the Senate, the Jubilee Alliance has 23 compared to Cord's 19.

In the new constitutional dispensation, Parliament's powers have been enhanced and most appointments by the executive branch have to get MPs' endorsement. Therefore, Parliament will be asked to approve cabinet nominees and diplomatic appointments. With Jubilee having the upper hand in both houses, it will find it easier to ensure proposals that require approval of the elected representatives are passed.

County Results

For the purposes of devolution, the constitution created 47 counties that are led by elected governors.

The official list of elected county assembly representatives reveals that parties allied to Cord enjoy a majority in the country's major counties of Nairobi, Mombasa, Kisumu, and Kakamega. Parties allied to the Jubilee Alliance control Nakuru, Kiambu, and Uasin Gishu counties. The list shows that out of the 85 elected county assembly representatives in Nairobi, the two main Cord partners, ODM and Wiper Democratic Movement, enjoy a slim majority of 43 members against TNA and Alliance Party of Kenya's 42 members.

ODM is in total control in Mombasa county with all the 30 county representatives elected on its ticket. The Jubilee Alliance is in control of the Nakuru county assembly with TNA and its principal ally, the United Republican Party (URP), having a total of 47 out of the 54 elected county representatives.

In Kiambu county, one of the biggest in the country with 59 wards, TNA enjoys a huge majority of 56 elected representatives with the remaining three

elected on the tickets of Agano, GNU and Farmers parties. Cord is in control at the Kakamega county assembly which, like Kiambu, has 59 wards. Out of these, 41 county representatives are from Cord affiliate parties while the other eighteen are from parties allied to the Amani coalition, UDF, and New-Ford Kenya.

In Kisumu county with a total of 34 wards, ODM commands a majority of 29 elected representatives with its ally, the People's Democratic Party (PDP) having four representatives and another Cord affiliate, the Federal Party of Kenya has one county representative.

Further competition is expected in Bungoma county with a total of 44 wards, especially if the 18 members elected on parties allied to the Amani coalition decide to join forces with their three colleagues from the Jubilee Alliance to face the 22 members elected on parties allied to Cord.

Discrepancies in the Voter Register and Released Numbers

The comparison of final results for the presidential election (recorded on Form 36), which served as the basis for the compilation of results, showed worrying discrepancies. First, in some cases the recorded number of ballots cast differed by several hundred to several thousand for the different elections in the same polling station. This resulted in turnout figures being different for each elective position in a given polling station where voters were supposed to cast all six ballots without exception. Second, the Center notes that the number of registered voters published with the presidential results released by the IEBC on March 9 differed from the voter statistics per county published by the IEBC on Feb. 24.

The Center also observed discrepancies between the provisional list of voters registered published on Dec. 18, 2012, and the voter statistics per county published

⁹ Art. 27 (3) of the Constitution



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by the IEBC on Feb. 24. While small adjustments would have been expected, a total variation of about 100,000 voters between the two documents suggests that their data have been moved in the register from one county to another without an explanation from the IEBC or the possibility of public scrutiny.

Additional discrepancies in the number of registered voters have emerged from the tabulation process. A significant number of registered voters recorded on Form 36 by returning officers in constituency tallies differed from those listed in the national voter register. While the number of voters recorded on forms 36 should have matched the voter register, it was very often not the case.

This lack of transparency in modifications to the national voting register that served as the basis for the organization of the elections is inconsistent with national and international standards for democratic elections.¹⁰

These numerical discrepancies in such important elections, the first under a new legal framework by a new IEBC, call for more rigour in the tally operation and more guidance for IEBC personnel. However, the Center has analyzed these discrepancies for all 290 parliamentary constituencies and concluded that although they raise serious concerns regarding the accuracy of numbers released by the IEBC, the differences did not favor any particular presidential candidate and therefore do not indicate an effort at partisan manipulation.

Election Dispute Resolution

Effective dispute resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process.¹¹ With a renewed

public confidence in its capacity to be a fair arbitrator of political divisions, the judiciary has played an active role since the very beginning of the electoral process. The most important role has been played by the Supreme Court, led by Chief Justice Willy Mutunga. The Carter Center commends the court for having upheld the highest standards of transparency of its hearing by having retransmitted live the entirety of the pre-trial conference and public hearing of the presidential election litigation process. As a pioneer measure, the Center hopes it will be reproduced in other parts of the world to ensure transparency and reinforce trust in electoral dispute resolution mechanisms.

A petition against the results of the presidential election can be filed by any citizen of Kenya. Any ground can be the basis for a petition as long as it is deemed sufficient by the court and is not frivolous, vexatious, or scandalous. The deputy president-elect and the IEBC are automatically included as respondents to any petition against the results of presidential elections. The petition has to be submitted within seven days of the declaration of results and determined within 14 days after its filing.¹² At the time of the filing, the petitioner must deposit a sum of 1,000,000 KSH as security for costs otherwise the petition will be dismissed. Article 83 of the electoral law gives extended powers to the courts in deciding on the outcome of the judicial process: "No election shall be declared to be void by reason of non compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution or that the non compliance did not affect the result of the election." This article has clearly been written for the final results and is silent on non compliance effecting results of a first round election. The disposition makes

¹⁰ Art. 81 of the constitution requires transparency of the electoral system, General comments on Art. 25, para. 11

¹¹ UDHR, Art. 21

¹² Art. 140 of the constitution



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it more difficult to void a presidential election that respected very broad constitutional principles. The Supreme Court has the power to make any order it may deem fit and just in the circumstance. Supreme Court decisions are not subject to appeal.

With regards to the other elections, a constitutional timeframe of 28 days after the declaration of results by the IEBC is set up in Article 87 for all petitions concerning an election other than the presidential. As the results for all other elections than presidential were gazetted on March 13, the deadline is therefore set for April 10. The high courts are responsible for hearing matters pertaining to parliamentary and gubernatorial elections. Magistrates' courts are receiving petitions against county assembly elections. A petitioner seeking to challenge a Parliament or a county governor must deposit 500,000KSH, while a petitioner seeking to challenge the election of a member of a county assembly shall deposit 100,000 KSH.

Three petitions against the presidential election results were submitted to the Supreme Court within the time frame indicated in the constitution. One petition from Jubilee supporters challenged the inclusion of rejected votes in the final tally of the presidential poll, while those from Raila Odinga and from the Africa Center for Open Governance (AFRICOG) both sought to invalidate the election and instigate the organization of fresh presidential elections. Attorney General Githu Muigai was admitted as friend of the court or *amicus curiae*.

There were five main arguments brought to the court by the petitioners:

- Poll books, the biometric voter register, and the system for electronic transmission of results were poorly procured and prepared so they were bound to fail from the very beginning.
- The failures of the electronic system and consequent return to printed lists of voters opened the system to

manipulation which effectively took place on election day.

- In spite of having been finalized and closed for registration on Feb. 20, the number of voters on the register was increased without any known explanation.
- Forms 36 were manipulated in order to forge results as illustrated by instances of higher number of votes cast than voters registered.
- The total number of votes cast for presidential candidates was higher than for the other elections even when taking into consideration spoilt and rejected ballots.

The court rejected a request from AFRICOG to require the IEBC to produce the manual register used in polling stations on election day on the basis of a lack of time to scrutinize documents from 33,000 polling stations. The court also rejected a demand from Cord for a forensic audit of the electronic tally system used by the IEBC to compile the presidential results and refused to accept a lengthy affidavit raising new allegations, including evidence from 122 constituencies, because the evidence was filed without the permission of the Supreme Court and because there was no time for respondents to file a reasonable answer.

At the beginning of the proceedings, the Supreme Court ordered a verification of forms 34 and 36 for 22 polling stations to verify the number of votes cast, valid votes, and rejected votes. The judicial verification under the supervision of the registrar of the Supreme Court was not open to international observation, however Cord and Jubilee were able to send 10 observers each to scrutinize the process. The report from the registrar did not make mention of the figures obtained during the operation. The judicial team also scrutinized forms 34 and 36 for a total of 18,000 polling stations and found that 10 Forms 34 were



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missing along with 75 Forms 36. The team did not report on discrepancies between numbers in forms 34 and 36, thereby considerably reducing the added value of the exercise.

The two day pre-trial conference started on March 25 and was followed by two days of hearings. After another two days of deliberation, the Supreme Court rejected all petitions and confirmed the results of the presidential election on the last day of the constitutional timeframe, March 30. The written judgment of the Supreme Court will not be available for two weeks.

Raila Odinga made an appearance on TV acknowledging the decision of the Supreme Court and affirming his support for the rule of law and constitutional order. While reaffirming his arguments, his speech appealed for the respect for the Supreme Court decision and wished good luck to president-elect Uhuru Kenyatta and his vice president-elect William Ruto. The Carter Center encourages Cord supporters to remain calm and to respect the appeal of Raila Odinga for peace and unity of the country.

The presidential election petition proceedings were held in a very professional and rigorous manner. The lawyers representing petitioners avoided making personal accusations and the Supreme Court judges kept the hearings in line with the highest standards of professionalism and integrity necessary for the conduct of electoral litigation. The overall conduct of the presidential election disputes was conducted in accordance with international standards of democratic elections.

The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya. The Carter Center's 60-member delegation was in Kenya at the invitation of the IEBC. The Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005. The Center assesses electoral processes based on states' obligations for democratic elections contained in their regional and international commitments and in their domestic legal framework.



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For Immediate Release

March 3, 2013

Observer Groups Call for Peaceful Polls, Urge Kenyans to Await Results

Observer groups from the African Union, The Carter Center, the East African Community, Intergovernmental Authority on Development, Common Market for Eastern and Southern Africa, International Conference on the Great Lakes Region, the Commonwealth, and the European Union call on Kenya's political parties and candidates to abide by the Electoral Code of Conduct and to respect their commitment to nonviolent participation in the electoral process. The observers also trust that the government of Kenya and the security forces will secure all

stakeholders in a transparent and impartial manner.

The observer groups also call on all Kenyans to respect the right of fellow voters to choose their elected representatives free from fear of intimidation or violence. The observers hope that all political actors will abide by the rule of law and allow the Independent and Electoral Boundaries Commission to conduct the polling, counting and tabulation process.

The observer groups urge anyone with a complaint about the electoral process to follow the established judicial procedures.

*His Excellency
Joaquim Chissano*

African Union
Mission Leader

*His Excellency
Rupiah Banda*

Carter Center
Co-Leader

H.E. Festus Mogae
Chair of Commonwealth
Observer Group

*Hon. Abdulrahman
Kinana*
East African Community
Chief of Mission

*Amb. Simbi
Veke Mubako*
Leader of
COMESA Mission

*Amb. Dr. Berhane
Ghebray*
Leader of IGAD
Mission

Mr. Alojz Peterle,
MEP
European Union
Chief Observer

Dr Aisha Abdullahi
Political Affairs
Commissioner
African Union
Deputy Mission
Leader

Dr. John Stremmler
Carter Center
Co-Leader



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS



For Immediate Release

Nairobi, 5 March 2013

The Observer Missions of the African Union, the Carter Center, the Commonwealth, the European Union, Common Market for Eastern and Southern Africa, Intergovernmental Authority on Development, East African Community, International Conference on the Great Lakes Region and Electoral Institute for Sustainable Democracy in Africa to the 2013 Kenya Elections headed by His Excellency Joaquim Chissano, His Excellency Rupiah Banda, His Excellency Festus Mogae, Mr. Alojz Peterle, Amb. Simbi Veke Mubako, Amb. Dr. Berhane Ghebray, Hon. Abdulrahman Kinana and Mr. Vincent Tohbi, respectively, have observed the voting and counting process across the country.

We are pleased that the voting and counting took place in a peaceful and transparent atmosphere and that the people of Kenya demonstrated strong commitment to their democratic process by turning out in significant numbers to cast their votes.

We call on all stakeholders of the Kenya electoral process to ensure that this peace and transparency continues to inform the remainder of the process. We further call on political party leaders to encourage their supporters to conduct themselves with the highest responsibility.

We urge all electoral stakeholders to respect the official election results that will be announced by the Independent Electoral and Boundaries Commission (IEBC) with calmness and in full respect of the Constitution of Kenya and the democratic process. In this regard, we appeal to all political parties and candidates that have concerns to follow the legal process laid down in the Constitution and the Electoral Code for the resolution of any disputes related to the electoral process. A special responsibility lies with the political leaders of Kenya to continue to abide by their pre-election commitments to peace.



APPENDIX E DEPLOYMENT PLAN

Team Number	Last Name	First Name	Province / Duty Station
LTO1	Murati	Arba	Nairobi/Nairobi
	Jeppsson	Jon	
STO0101	Koenig	Tom	Nairobi/Dagoretti
	Codjo Messanh	Emile	
STO0102	Hitz	Nancy	Nairobi/Makadara
	Nackerdien	Rushdi	
STO0103	Martin-Kohlmorgen	Jennifer	Nairobi/Embakasi East
	Reynolds	Eric	
STO0104	Cole	Oley	Nairobi/Westlands
	Cohn	David	
STO0105	Bickley	Wilson	Nairobi/Kasarani
	Faia	Tiago	
LTO2	Sancho Alvarez	Nuria	Central/Nyeri
	Knævelsrud	Hans Christen	
STO0201	Klopp	Jacqueline	Central/Murang'a
	Kiryapawo	Tomasi	
STO0202	Hoffman	William	Central/Kiambu
	Zerargui	Khalil	
LTO3	Quesenberry	Raleigh	Eastern/Meru
	Fokwa Mbanwi	Honore	
STO0301	Kikoler	Naomi	Eastern/Embu
	Taylor	Gerard	
STO0302	Nemaheni	Funanani	Eastern/Isiolo
	Lynam	John	
STO0303	Ayari	Ines	Eastern/Machakos
	Krause	William	
LTO4	Rothchild	Natasha	Rift Valley/Nakuru
	Ashagrie	Abdi	
STO0401	Machan	Ahna	Rift Valley/Nakuru
	Folorunsho	Moshood	

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

STO0402	Serban	Alina	Rift Valley/Eldoret
	Nkuuhe	Johnson	
STO0403	Polyuga	Oksana	Rift Valley/Eldoret
	Penar	Peter	
LTO5	Johansson Studsrød	Trude	Western/Kakamega
	Kamara	Shebora	
STO0501	Broadbent	Emma	Western/Kakamega
	Munyikwa	Hamadziripi	
STO0502	Ismail	Zahra	Western/Bungoma
	Iwinski	Krzysztof	
LTO6	Bryant	Roger	Nyanza/Kisumu
	Kamara	Mohammed	
STO0601	Callejas	Isabel	Nyanza/Kisii
	Ghodbane	Anis	
STO0602	Fletcher	Erika	Nyanza/Kisii
	Nothern	Steven	
LTO7	Luongo	Monica	Coast/Mombasa
	Maliba	Auguy	
STO0701	Theodory	Juliana	Coast/Kwale
	Barcott	Rye	
STO0702	McPeak	Georgia	Coast/Kilifi
	Molony	Thomas	

LTO: Long-term observer

STO: Short-term observer



APPENDIX F CHECKLISTS

OPENING

1. Team Number: _____	2. County: _____	3. Constituency #: _____	4. # of the Registered Voters at the PS: _____	Urban	Rural
5. Polling Center name: _____	6. PC Code: _____	7. PS Code: _____	8. Is your PS: _____		
9. Arrival Time: _____ : _____ (24 hour clock)	10. Departure Time: _____ : _____ (24 hour clock)	11. Total # of ballot papers received: _____			
Inside the Polling Center					
				Yes	No
12	Was the environment inside the Polling Center calm?				
13	Was the Polling Center and its surrounding area free from campaigning, including campaign materials?				
14	Was the police/security presence at the PC in accordance with the procedures?				
15	Was the queue management inside the Polling Center effective?				
Inside the Polling Station					
16	Was the environment inside the Polling Station calm?				
17	Was the Polling Station free from unauthorized persons?				
18	Was the Polling Station accessible to all voters, including disabled voters?				
Opening Procedures					
19	Were all the poll workers present at Polling Station?				
20	How many poll workers in the Polling Station are women?				
21	What time did the Polling Station open? a. 6:00 – 6:30 b. 6:31 – 7:00 c. After 7:00				
22	If other than A, why did the Polling Station open late? a. missing ballot papers b. missing poll book c. missing official IEBC stamps d. missing forms e. missing Indelible ink f. missing ballot box seals g. missing ballot boxes h. missing voting screens i. lack of polling workers j. Presiding Officer not present k. lack of understanding of opening procedures l. other				
23	Was the Polling Station opening free from interference?				
24	Which political party/candidates were represented among the agents present in the PS? Select multiple: a. TNA b. URP c. ODM d.WDP e. Ford KEnya f. UDF g. KNC h. NARC Kenya i. Other j.				
25	Was the number of political party/candidate agents present restricted to one as per procedures?				
26	If NO, which one party/candidate had more then one agent? a. TNA b. URP c. ODM d.WDP e. Ford KEnya f. UDF g. KNC h. NARC Kenya i. Other j. None				
27	How many political party/candidate agents were women?				
28	Which organizations are represented among national observers present in the PS? a. ELOG b. Other c. None				
29	How many national observers were women?				
30	Were authorized persons free from unreasonable restrictions on their work?				
31	If NO, which persons were restricted? a. Candidate agents c. National observers d. International observers e. Poll worker				
32	Did the Presiding Officer record all required information in the Polling Station Diary?				
33	Were the ballot boxes presented as empty to all present including party agents, candidates and observers?				
34	Were the ballot boxes sealed with numbered seals by the Presiding Officer ?				
35	Were the numbers of the seals recorded in the Polling Station Diary?				
36	Were the party/cand. agents and domestic observers able to record the numbers of the seals?				
37	Were the poll workers performing in an impartial and non partisan manner?				
38	Was the process free of any official complaints lodged at the PS up to your departure?				
39	If NO, who was the complainant: a. Candidate b. Agent c. Voter d. Other				
40	If NO, were the complaints addressed according to procedure?				
Overall Assessment of the Opening Process					

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

POLLING

1. Team Number: _____	2. County: _____	3. Constituency #: _____	4. # of the Registered Voters at the PS: _____	Urban	Rural
5. Polling Center name: _____	6. PC Code: _____	7. PS Code: _____	8. Is your PS: _____		
9. Arrival Time: _____ (24 hour clock)	10. Departure Time: _____ (24 hour clock)	11. Total # of ballot papers received: _____			
12. # of voters who have already voted: _____					
Inside the Polling Center					
				Yes	No
13	Was the environment inside the Polling Center calm?				
14	Was the Polling Center and its surrounding area free from campaigning, including campaign materials?				
15	Was the police/security presence at the PC in accordance with the procedures?				
16	Was the queue management inside the Polling Center effective?				
Inside Polling Station					
17	Was the layout of the PS convenient?				
18	Was the environment inside the Polling Station calm?				
19	Was the Polling Station free from unauthorized persons?				
20	Was the Polling Station accessible to all voters, including disabled voters?				
21	What time did the Polling Station open? a. 6:00 – 6:30 b. 6:31 – 7:00 c. After 7:00				
Voting Procedures					
22	Were all poll workers present at the moment of your visit?				
23	How many poll workers in the Polling Station are women?				
24	Was the sensitive/essential material available?				
25	If NO, which were missing? a. missing ballot papers b. missing poll book c. missing official IEBC stamps d. missing Indelible ink e. missing voting screens f. other				
26	Was every voter identified according to the procedures?				
27	If NO, specify which procedures are not being followed: a. Not checking for Ink b. Not checking identity c. Not striking through eligible voters' names				
28	Was every voter given the right to vote?				
29	If NO, why? a. Not on voter list b. Eligibility challenged c. unidentifiable voter d. Wrong polling station e. Other				
30	Was every ineligible voter denied the right to vote?				
31	Were the ballot issuers stamping the ballot papers?				
32	Did the poll workers explain to the voters how to correctly mark the ballots?				
33	Were the ballot boxes properly sealed?				
34	Was the secrecy of voting maintained?				
35	Was the assisted voting procedure being followed?				
36	Were all voters' left small fingers being inked?				
37	Was the polling process free from irregularities?				
38	If NO, please specify which irregularities took place. a. Multiple voting b. Ballot stuffing c. Interruption of voting Voter intimidation e. Illicit assistance f. Other d.				
39	Were the poll workers performing in an impartial and non partisan manner?				
40	On average, how long does it take a voter to vote?				
41	Which political party/candidates were represented among the agents present in the PS? Select multiple: a. TNA b. URP c. ODM d. WDP e. Ford Kenya f. UDF g. KNC h. NARC Kenya i. Other				
42	Was the number of political party/candidate agents present restricted to one as per procedures?				
43	If NO, which one party/candidate had more than one agent? a. TNA b. URP c. ODM d. WDP e. Ford Kenya f. UDF g. KNC h. NARC Kenya i. Other				
44	How many political party/candidate agents were women?				
45	Which organizations were represented among national observers present in the PS? a. ELOG b. Other c. None				
46	How many national observers were women?				
47	Were authorized persons free from unreasonable restrictions on their work?				
48	If NO, which persons were restricted? a. Candidate agents c. National observers d. International observers e. Poll worker				
49	Was the process free of any official complaints lodged at the PS up to your departure?				
50	If NO, who was the complainant: a. Candidate Agent b. Voter c. Other				
51	If NO, were the complaints addressed according to procedure?				
Overall Assessment of the Polling Process					
Instructions: Put an 'X' next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is					

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

CLOSING

1. Team Number: _____		2. County: _____		3. Constituency #: _____		4. # of the Registered Voters at the PS: _____		Urban	Rural	
5. Polling Center name: _____				6. PC Code: _____		7. PS Code: _____		8. Is your PS: _____		
9. Arrival Time: _____ (24 hour clock)			10. Departure Time: _____ (24 hour clock)			11. Total # of ballot papers received: _____				
12. Total # voters who voted _____										
Closing										
								Yes	No	N/A
13	Were the polls extended at this polling station?									
14	Were all voters who joined the queue before closing the polls allowed to vote?									
15	Were any voters allowed to join the queue after closing the polls?									
16	Was queue management in the Polling Center effective?									
17	At what time did the last voter vote?									
18	Were all ballot boxes apertures sealed?									
19	Was the record to the Polling Day Diary (PDD) made?									
Counting										
20	Were all poll workers present inside the Polling Station?									
21	How many poll workers in the PS were women?									
22	Were authorized persons free from unreasonable restrictions on their work?									
23	If NO, which persons were restricted? a. Candidate agents c. National observers d. International observers e. Poll worker									
24	Was the Polling Station free from unauthorized persons?									
25	Was the reconciliation done properly?									
26	Did the polling staff sort the ballots by candidate, showing each ballot to those present?									
27	Were criteria for determining invalid ballots followed correctly, recognizing the intent of the voter?									
28	Did the polling staff fill out the Results Declaration Forms 34 and 35 (RDF) correctly?									
29	Were all RDF signed by agents or/and observers?									
30	Were copies of the RDF made in a sufficient number and given to the party/candidate agents?									
31	Were all ballot boxes sealed with green seals and the seals # recorded in the PDD after the count was done?									
32	Were the RDF posted outside the Polling Station?									
33	Were all sensitive materials secured for transportation?									
34	Was the counting process free from irregularities?									
35	If NO, what type of irregularity occurred? a. Intimidation b. Confusion c. Violence d. Suspension of the count f. Other									
36	Were the poll workers performing in an impartial and non partisan manner?									
37	If the process was suspended, were the sensitive materials secured during this time?									
38	Which political party/candidates were represented among the agents present in the PS? Select multiple: a. TNA b. URP c. ODM d. WDP e. Ford Kenya f. UDF g. KNC h. NARC Kenya i. Other									
39	Was the number of political party/candidate agents present restricted to one as per procedures?									
40	If NO, which one party/candidate had more than one agent? a. TNA b. URP c. ODM d. WDP e. Ford Kenya f. UDF g. KNC h. NARC Kenya i. Other									
41	How many political party/candidate agents were women?									
42	Which organizations were represented among national observers present in the PS? a. ELOG b. Other c. None									
43	How many national observers were women?									
44	Was the process free of any official complaints lodged at the PS up to your departure?									
45	If NO, who was the complainant: a. candidate agent b. voter c. other									
46	If NO, were the complaints addressed according to procedure?									
Overall Assessment of the Process										
<p>Instructions: Put an 'X' next to the statement that best describes your assessment of the election environment & voting process for this station. If your response is "poor" or "very poor," it is important you provide further explanation in the comments section below.</p>										
47	How would you evaluate party/candidate agents' performance of their role? a. Very Good b. Good c. Poor d. Very Poor									
48	How would you evaluate the Polling Station staff's performance? a. Very Good b. Good c. Poor d. Very Poor									
49	How would you evaluate the proceedings at the Polling Station overall? a. Very Good b. Good c. Poor d. Very Poor									
<p>o Very Good - Procedures are conducted in a professional manner. No major irregularity. Most Qs were positively evaluated.</p> <p>o Good - Procedures were respected. Minor problems. Solutions were found to address them. Positive observation.</p> <p>o Poor - Some of the procedures were not respected. Nevertheless, the overall voting process was not badly affected.</p> <p>o Very Poor - Problems observed had a negative impact on the voting process. Many or key Qs were negatively evaluated. The validity of the result from this PS could be in question.</p>										
Comments										

(continues)



APPENDIX G LETTER OF INVITATION

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION (IEBC)

11th April, 2012

The Carter Center
One Copenhill
453 Freedom Parkway
Atlanta, GA 30307

Tel No. (404) 420 – 5100 or (800) 550 – 3560
Email: carterweb@emory.edu

To Democracy Pgm.
invitation for CC to
observe Kenya elections.
Zeh

Dear

**RE: INVITATION TO OBSERVE GENERAL ELECTIONS IN KENYA
SCHEDULED FOR THE 4TH MARCH, 2013**

Millions of Kenyans will be exercising their inalienable right of electing their leaders in the forth coming general elections. These elections will be very distinct from previous elections that Kenya has had in the past. In these elections, Kenyans will cast ballots for six elective positions namely: The President, the Governor, Senator, Member of National Assembly, Woman Representative and County Assembly Ward Representative. All these will be on the same day.

On behalf of the Independent Electoral Boundaries Commission (IEBC) I wish to extend to your esteemed organization an invitation to come and observe the election process. We have placed an application form on IEBC website: www.iebc.ke

IEBC values the presence of observers as a way of giving credibility to the electoral process and the results of the election.

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

We, therefore, welcome your presence in Kenya as election observers.

Thank you

**AHMED ISSACK HASSAN, EBS
CHAIRPERSON**



APPENDIX H ELECTION STATISTICS

General Statistics by County

County	Rejected Ballots(%)	Valid Votes	Votes Cast	Registered Voters	Voter Turnout
Mombasa	3,004 (1.10%)	269,314	272,318	408,747	66.62%
Kwale	975 (0.78%)	124,626	125,601	174,443	72.00%
Kilifi	2,382 (1.09%)	215,792	218,174	336,132	64.91%
Tana-River	509 (0.79%)	64,080	64,589	79,454	81.29%
Lamu	637 (1.44%)	43,534	44,171	52,346	84.38%
Taita-Taveta	1,023 (1.11%)	91,333	92,356	113,862	81.11%
Garissa	518 (0.56%)	91,382	91,900	115,202	79.77%
Wajir	544 (0.54%)	99,695	100,239	118,091	84.88%
Mandera	346 (0.34%)	101,271	101,617	120,768	84.14%
Marsabit	321 (0.36%)	89,561	89,882	104,615	85.92%
Isiolo	288 (0.60%)	47,358	47,646	54,462	87.48%
Meru	4,425 (1.03%)	425,394	429,819	487,265	88.21%
Tharaka	1,042 (0.75%)	137,942	138,984	155,487	89.39%
Embu	1,727 (0.87%)	197,918	199,645	227,286	87.84%
Kitui	2,629 (0.95%)	273,475	276,104	324,673	85.04%
Machakos	4,840 (1.30%)	367,238	372,078	445,096	83.59%

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

General Statistics by County (Continued)

County	Rejected Ballots(%)	Valid Votes	Votes Cast	Registered Voters	Voter Turnout
Makueni	2,175 (0.86%)	250,048	252,223	298,221	84.58%
Nyandarua	1,772 (0.74%)	237,975	239,747	255,984	93.66%
Nyeri	2,465 (0.74%)	328,559	331,024	356,380	92.89%
Kirinyaga	1,667 (0.69%)	239,881	241,548	265,290	91.05%
Muranga	2,352 (0.56%)	421,283	423,635	452,841	93.55%
Kiambu	5,063 (0.65%)	776,672	781,735	861,828	90.71%
Turkana	408 (0.40%)	100,876	101,284	132,885	76.22%
West-Pokot	721 (0.66%)	108,062	108,783	120,986	89.91%
Samburu	177 (0.33%)	53,772	53,949	61,114	88.28%
Trans-Nzoia	4,661 (2.33%)	195,286	199,947	244,640	81.73%
Uasin-Gishu	2,866 (1.01%)	281,862	284,728	330,618	86.12%
Elgeyo-Marakwet	1,021 (0.83%)	122,453	123,474	134,568	91.76%
Nandi	2,234 (0.95%)	234,008	236,242	263,254	89.74%
Baringo	1,145 (0.73%)	156,349	157,494	173,653	90.69%
Laikipia	802 (0.51%)	156,066	156,868	173,905	90.20%
Nakuru	5,515 (0.89%)	610,803	616,318	695,319	88.64%
Narok	1,648 (0.70%)	234,258	235,906	262,739	89.79%
Kajiado	2,055 (0.77%)	263,130	265,185	304,346	87.13%

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

General Statistics by County (Continued)

County	Rejected Ballots(%)	Valid Votes	Votes Cast	Registered Voters	Voter Turnout
Kericho	1,929 (0.73%)	260,973	262,902	290,458	90.51%
Bomet	1,402 (0.62%)	225,713	227,115	252,358	90.00%
Kakamega	6,996 (1.47%)	467,783	474,779	567,460	83.67%
Vihiga	2,079 (1.24%)	165,494	167,573	202,822	82.62%
Bungoma	5,306 (1.51%)	345,699	351,005	410,462	85.51%
Busia	2,272 (1.03%)	218,656	220,928	251,305	87.91%
Siaya	1,735 (0.60%)	286,712	288,447	311,919	92.47%
Kisumu	1,850 (0.53%)	347,119	348,969	385,820	90.45%
Homabay	1,054 (0.34%)	305,666	306,720	325,826	94.14%
Migori	1,323 (0.51%)	259,892	261,215	283,862	92.02%
Kisii	4,598 (1.32%)	344,064	348,662	412,945	84.43%
Nyamira	2,277 (1.24%)	181,232	183,509	219,358	83.66%
Nairobi	12,187 (0.86%)	1,398,476	1,410,663	1,728,801	81.60%
Diaspora	10 (0.43%)	2,318	2,328	2,637	88.28%



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

Presidential Results by County

County	Kenyatta (%)	Odinga (%)	Mudavadi (%)	Kenneth (%)	Dida (%)	Karua (%)	Kiyiapi (%)	Muite (%)
Mombasa	64,793 (23.79%)	189,985 (69.77%)	4,500 (1.65%)	3,028 (1.11%)	5,695 (2.09%)	748 (0.27%)	421 (0.15%)	144 (0.05%)
Kwale	17,633 (14.04%)	101,407 (80.74%)	1,492 (1.19%)	1,603 (1.28%)	631 (0.50%)	970 (0.77%)	653 (0.52%)	237 (0.19%)
Kilifi	23,386 (10.72%)	182,708 (83.74%)	2,397 (1.10%)	1,877 (0.86%)	1,518 (0.70%)	1,771 (0.81%)	1,691 (0.78%)	444 (0.20%)
Tana-River	22,419 (34.71%)	39,666 (61.41%)	457 (0.71%)	362 (0.56%)	674 (1.04%)	227 (0.35%)	204 (0.32%)	71 (0.11%)
Lamu	17,677 (40.02%)	22,962 (51.98%)	688 (1.56%)	250 (0.57%)	1,692 (3.83%)	81 (0.18%)	127 (0.29%)	57 (0.13%)
Taitaveta	12,175 (13.18%)	75,329 (81.56%)	1,030 (1.12%)	700 (0.76%)	359 (0.39%)	797 (0.86%)	740 (0.80%)	203 (0.22%)
Garissa	41,672 (45.34%)	44,724 (48.67%)	384 (0.42%)	694 (0.76%)	3,653 (3.97%)	110 (0.12%)	101 (0.11%)	44 (0.05%)
Wajir	38,927 (38.83%)	49,712 (49.59%)	389 (0.39%)	1,683 (1.68%)	8,611 (8.59%)	154 (0.15%)	148 (0.15%)	71 (0.07%)
Mandera	94,433 (92.93%)	4,366 (4.30%)	61 (0.06%)	280 (0.28%)	2,002 (1.97%)	41 (0.04%)	56 (0.06%)	32 (0.03%)
Marsabit	42,406 (47.18%)	43,843 (48.78%)	296 (0.33%)	187 (0.21%)	2,548 (2.83%)	105 (0.12%)	142 (0.16%)	34 (0.04%)
Isiolo	26,401 (55.41%)	14,108 (29.61%)	146 (0.31%)	198 (0.42%)	6,330 (13.29%)	70 (0.15%)	80 (0.17%)	25 (0.05%)
Meru	384,290 (89.41%)	32,447 (7.55%)	1,364 (0.32%)	3,035 (0.71%)	747 (0.17%)	1,715 (0.40%)	1,256 (0.29%)	540 (0.13%)
Tharaka	128,397 (92.38%)	7,120 (5.12%)	347 (0.25%)	612 (0.44%)	246 (0.18%)	544 (0.39%)	539 (0.39%)	137 (0.10%)
Embu	177,676 (89.00%)	15,912 (7.97%)	682 (0.34%)	1,082 (0.54%)	411 (0.21%)	1,102 (0.55%)	758 (0.38%)	295 (0.15%)
Kitui	40,752 (14.76%)	219,588 (79.53%)	4,234 (1.53%)	2,193 (0.79%)	924 (0.33%)	2,611 (0.95%)	2,121 (0.77%)	1,052 (0.38%)
Machakos	35,660 (9.58%)	319,594 (85.89%)	3,277 (0.88%)	2,715 (0.73%)	925 (0.25%)	2,086 (0.56%)	2,160 (0.58%)	821 (0.22%)
Makueni	12,652 (5.02%)	228,843 (90.73%)	2,456 (0.97%)	1,510 (0.60%)	818 (0.32%)	1,433 (0.57%)	1,550 (0.61%)	786 (0.31%)
Nyandarua	232,808 (97.11%)	2,889 (1.21%)	498 (0.21%)	504 (0.21%)	162 (0.07%)	526 (0.22%)	500 (0.21%)	88 (0.04%)

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

Presidential Results by County (Continued)

County	Kenyatta (%)	Odinga (%)	Mudavadi (%)	Kenneth (%)	Dida (%)	Karua (%)	Kiyiapi (%)	Muite (%)
Nyeri	318,880 (96.33%)	5,638 (1.70%)	641 (0.19%)	1,044 (0.32%)	362 (0.11%)	1,066 (0.32%)	744 (0.22%)	184 (0.06%)
Kirinyaga	231,868 (95.99%)	3,471 (1.44%)	353 (0.15%)	655 (0.27%)	265 (0.11%)	2,438 (1.01%)	700 (0.29%)	131 (0.05%)
Muranga	406,334 (95.92%)	10,312 (2.43%)	601 (0.14%)	1,811 (0.43%)	332 (0.08%)	927 (0.22%)	779 (0.18%)	187 (0.04%)
Kiambu	705,185 (90.21%)	61,700 (7.89%)	2,191 (0.28%)	4,254 (0.54%)	479 (0.06%)	1,712 (0.22%)	835 (0.11%)	316 (0.04%)
Turkana	30,235 (29.85%)	68,402 (67.53%)	533 (0.53%)	375 (0.37%)	179 (0.18%)	482 (0.48%)	490 (0.48%)	180 (0.18%)
West-Pokot	79,772 (73.33%)	24,962 (22.95%)	1,378 (1.27%)	636 (0.58%)	135 (0.12%)	701 (0.64%)	372 (0.34%)	106 (0.10%)
Samburu	22,085 (40.94%)	31,086 (57.62%)	122 (0.23%)	139 (0.26%)	54 (0.10%)	70 (0.13%)	196 (0.36%)	20 (0.04%)
Trans-Nzoia	74,466 (37.24%)	92,035 (46.03%)	24,762 (12.38%)	1,035 (0.52%)	506 (0.25%)	966 (0.48%)	1,077 (0.54%)	439 (0.22%)
Uasin-Gishu	211,438 (74.26%)	60,060 (21.09%)	7,208 (2.53%)	1,269 (0.45%)	367 (0.13%)	547 (0.19%)	860 (0.30%)	113 (0.04%)
Elgeyomarakwet	113,680 (92.07%)	5,993 (4.85%)	658 (0.53%)	1,013 (0.82%)	208 (0.17%)	374 (0.30%)	442 (0.36%)	85 (0.07%)
Nandi	192,587 (81.52%)	20,549 (8.70%)	17,497 (7.41%)	884 (0.37%)	463 (0.20%)	599 (0.25%)	1,211 (0.51%)	218 (0.09%)
Baringo	138,488 (87.93%)	14,824 (9.41%)	1,201 (0.76%)	520 (0.33%)	219 (0.14%)	495 (0.31%)	446 (0.28%)	156 (0.10%)
Laikipia	134,111 (85.49%)	19,702 (12.56%)	492 (0.31%)	541 (0.34%)	208 (0.13%)	493 (0.31%)	437 (0.28%)	82 (0.05%)
Nakuru	494,239 (80.19%)	105,660 (17.14%)	4,901 (0.80%)	2,349 (0.38%)	735 (0.12%)	1,234 (0.20%)	1,305 (0.21%)	380 (0.06%)
Narok	109,413 (46.38%)	118,623 (50.28%)	964 (0.41%)	2,542 (1.08%)	282 (0.12%)	402 (0.17%)	1,905 (0.81%)	127 (0.05%)
Kajiado	138,851 (52.36%)	117,856 (44.44%)	1,636 (0.62%)	2,265 (0.85%)	208 (0.08%)	484 (0.18%)	1,775 (0.67%)	55 (0.02%)
Kericho	238,556 (90.74%)	17,326 (6.59%)	1,851 (0.70%)	1,143 (0.43%)	431 (0.16%)	505 (0.19%)	931 (0.35%)	230 (0.09%)

(continues)



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

Presidential Results by County (Continued)

County	Kenyatta (%)	Odinga (%)	Mudavadi (%)	Kenneth (%)	Dida (%)	Karua (%)	Kiyiapi (%)	Muite (%)
Bomet	210,501 (92.68%)	10,463 (4.61%)	1,092 (0.48%)	1,503 (0.66%)	357 (0.16%)	716 (0.32%)	874 (0.38%)	207 (0.09%)
Kakamega	12,469 (2.63%)	303,120 (63.84%)	144,962 (30.53%)	1,554 (0.33%)	1,247 (0.26%)	1,583 (0.33%)	1,993 (0.42%)	855 (0.18%)
Vihiga	2,542 (1.52%)	77,825 (46.44%)	82,426 (49.19%)	538 (0.32%)	467 (0.28%)	591 (0.35%)	802 (0.48%)	303 (0.18%)
Bungoma	42,988 (12.25%)	185,419 (52.83%)	107,868 (30.73%)	1,862 (0.53%)	1,529 (0.44%)	2,467 (0.70%)	2,601 (0.74%)	965 (0.27%)
Busia	8,186 (3.71%)	189,161 (85.62%)	18,608 (8.42%)	680 (0.31%)	389 (0.18%)	639 (0.29%)	769 (0.35%)	224 (0.10%)
Siaya	884 (0.31%)	284,031 (98.47%)	713 (0.25%)	380 (0.13%)	94 (0.03%)	189 (0.07%)	385 (0.13%)	36 (0.01%)
Kisumu	4,630 (1.33%)	337,232 (96.64%)	3,835 (1.10%)	586 (0.17%)	215 (0.06%)	174 (0.05%)	367 (0.11%)	80 (0.02%)
Homabay	725 (0.24%)	303,447 (98.93%)	557 (0.18%)	278 (0.09%)	81 (0.03%)	154 (0.05%)	316 (0.10%)	108 (0.04%)
Migori	26,055 (9.97%)	225,645 (86.38%)	6,197 (2.37%)	586 (0.22%)	253 (0.10%)	452 (0.17%)	569 (0.22%)	135 (0.05%)
Kisii	95,596 (27.42%)	236,831 (67.93%)	2,632 (0.75%)	2,511 (0.72%)	908 (0.26%)	2,565 (0.74%)	1,975 (0.57%)	1,046 (0.30%)
Nyamira	54,071 (29.47%)	121,590 (66.26%)	1,323 (0.72%)	1,580 (0.86%)	430 (0.23%)	1,098 (0.60%)	858 (0.47%)	282 (0.15%)
Nairobi	659,490 (46.75%)	691,156 (49.00%)	22,061 (1.56%)	15,662 (1.11%)	3,493 (0.25%)	4,636 (0.33%)	1,730 (0.12%)	248 (0.02%)
Diaspora	951 (40.85%)	1,224 (52.58%)	20 (0.86%)	78 (3.35%)	6 (0.26%)	31 (1.33%)	7 (0.30%)	1 (0.04%)

Elected Women

Elective Posts	No. of Women Candidates	Total No. of Candidates	No. of Women Elected	Total No.
Presidential	1	8	–	1
Gubernatorial	7	237	–	47
Senator	17	245	–	47
Member of Parliament	168	2043	16	290



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Nominated Women

Nominated Posts	No. of Women Nominated	ODM	TNA	URP	APK	Ford-K	UDF	WIPER	KANU
National Assembly	4	1	2	1	–	–	–	–	–
Senate	16	4	4	3	1	1	1	1	1
Senate/youth	1	1	–	–	–	–	–	–	–
Senate/people with disabilities	1	–	1	–	–	–	–	–	–

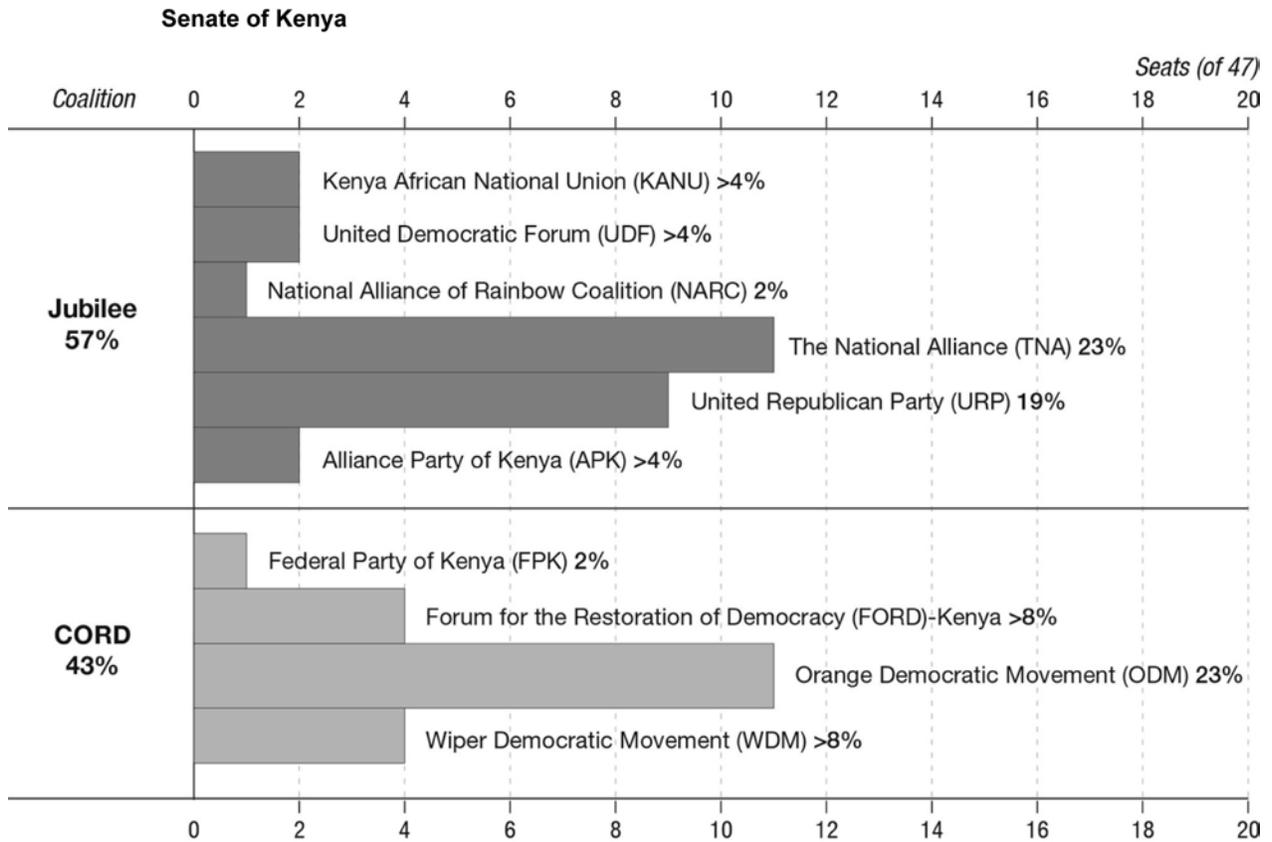
* The 10th Parliament had 12 elected women M.P.s with 10 nominated bringing the total to 22.

Select Security Incidents

Date	Location	Incident
01 March	Malindi	Early AM. 30 men armed with bladed weapons parade past the Malindi police station and later murder an 'up-country' woman and injure 2 men.
01 March	Kisauni – Mombasa	Police arrest 2 suspected members of the MRC and later uncover a large cache of weapons.
03 March	Kisauni – Mombasa	20.00 hours. Suspected MRC members attack and kill a police officer with bladed weapons while he was on patrol.
04 March	Changamwe – Mombasa	01.00 hours. A large gang of armed men ambush a police patrol, killing one senior police officer and injuring 3 more. Later disturbances in Mishomoroni, Bombululu and Kwa Jomvu districts fail to dissuade voters from voting. Police later arrest 2 suspects in the Changamwe area.
04 March	Kaloleni – Kilifi County	03.00 hours. In the Choni area of Kaloleni, armed men killed a police officer and a National Youth Service worker engaged in election duties outside the District Office.
04 March	Chumauni – Kilifi County	03.00 hours. Armed men hacked to death 2 IEBC officials and 2 police officers at an election facility in a primary school as well as wrecking the building and destroying 4 cars.
04 March	CBD – Mombasa Island	19.00 hours. Supporters of the 2 main candidates for County Governor clashed in the street and one man fired a shot in the air. He was later arrested by the police.
04 March	Kiribe – Kwale County	19.00 hours. An elderly community leader was killed by a gang of young men, apparently because he refused to support the MRC. Elsewhere in Kwale County a petrol bomb failed to explode when thrown at a petrol station.
06 March	Mishomoroni – Mombasa	21.00 hours. Police raided an alleged MRC hideout where 100 men were supposed to be conducting training and illegal oath taking. Only 2 suspects were arrested.

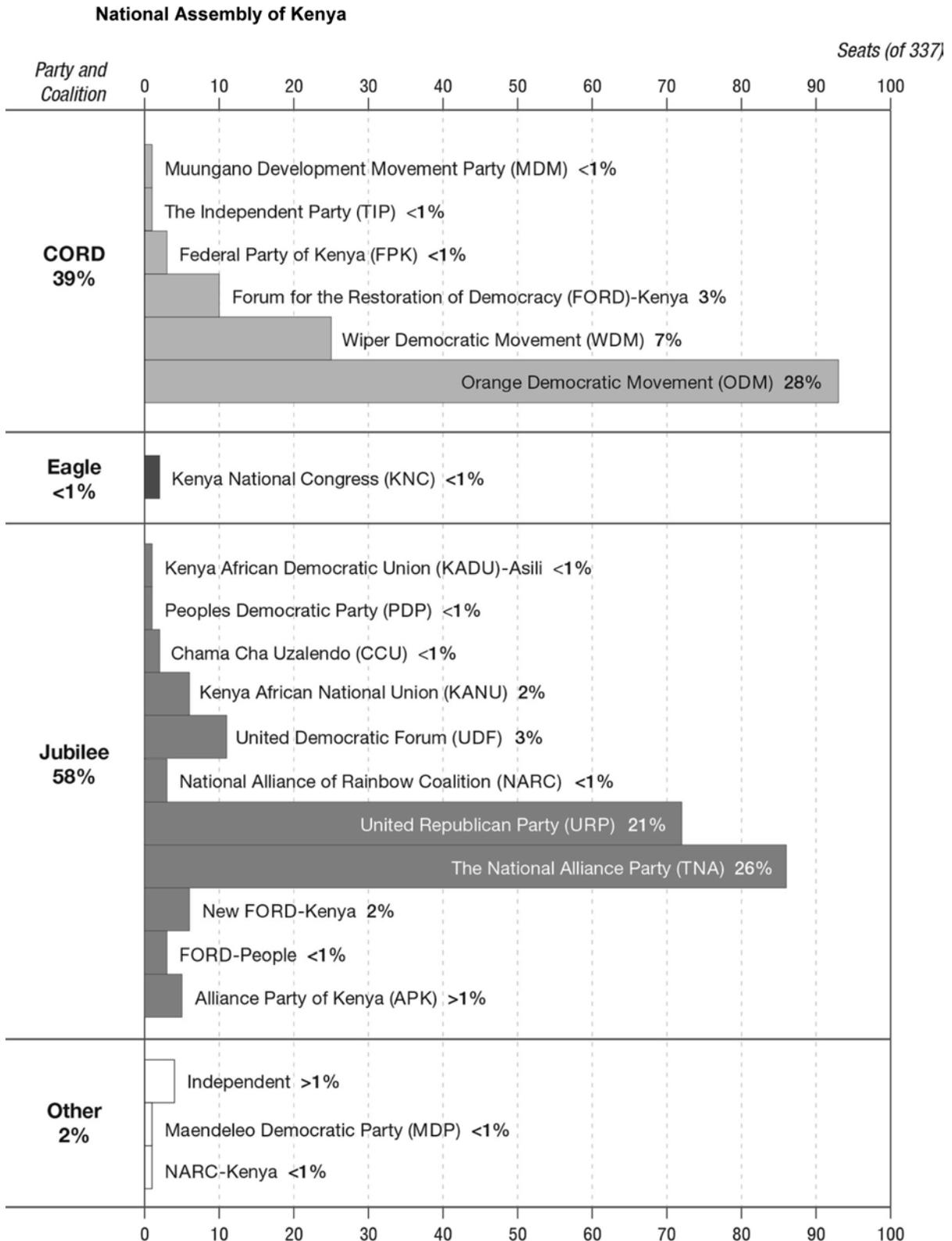


APPENDIX I PARTY AND COALITION SEATS





OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS





APPENDIX J

THE CARTER CENTER FRAMEWORK FOR ASSESSMENT OF ELECTIONS BASED ON INTERNATIONAL OBLIGATIONS FOR DEMOCRATIC ELECTIONS

The Carter Center, like many other international observation organizations, often refers explicitly to the international obligations and commitments of the countries it observes. These obligations are found in international treaties and other instruments to which the country has voluntarily committed through the signature and ratification of these documents. Since states commit voluntarily to adhere to international obligations, use of international obligations as the basis of election assessment criteria helps promote consistency and objectivity in election assessments. The Center assesses the country's legal framework against those obligations and based on observation of the implementation of laws and procedures relevant to the election. The final report of an election observation mission is therefore

organized around the principles and constituent parts of an election described below (depending on the duration of the Center's mission not all parts may be evaluated).

While these obligations have long existed in international law, they have not before been organized in one place and according to parts of the electoral process for practical use by election observers and other practitioners. Through a systematic review of the sources, The Carter Center has identified 21 fundamental rights and obligations that are relevant to the electoral process. These include obligations directly related to the electoral process, as well as individual human rights that, while applicable all of the time, are particularly relevant during the electoral process. These include:

The free expression of the will of the people – The popular will, freely expressed through genuine elections, must be the basis for legitimate political authority.

Genuine and periodic elections – Twin obligations requiring that elections must provide a real choice and be held at reasonable intervals, in a context that protects other fundamental rights.

The state must take necessary steps to ensure rights – States must take the steps necessary, in both law and practice, to give effect to fundamental rights.

The rule of law – The principle of the rule of law, implicit in international human rights law, is an essential condition of the fulfillment of rights.

Universal suffrage – The state should ensure that the broadest pool of voters is eligible to cast ballots, only restricted on the basis of reasonable and objective criteria.

Equal suffrage – The weight or value of the votes of eligible voters should be equal.

Secret ballot – Voting by secret ballot is recognized as critical for protecting free expression.

Prevention of corruption – States should take steps to prevent corruption, including through the promotion of transparency measures.

Every citizen has the right to participate in public affairs – Citizens have the right to participate in public affairs, including through civil society activities.

Every citizen has the right to vote – Citizens have the right to vote, only restricted on the basis of objective and reasonable criteria.



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

Every citizen has the right to be elected – Citizens have the right to be elected, only restricted on the basis of reasonable and objective criteria.

Freedom of assembly – Everyone has the right to assemble, including candidates and voters, during campaigns. Restrictions must be prescribed by law and “necessary in a democratic society.”

Freedom of association – Everyone has the right to free association, including the establishment of political parties and other organizations. Restrictions must be prescribed by law.

Freedom of movement – Everyone has the right to free movement, and any restrictions on that right must be proportionate to the interests it is intended to protect.

Equality before the law and absence of discrimination – States are obligated to ensure equality before the law and prevent discrimination in the exercise of rights and freedoms.

Freedom of opinion and expression – Everyone has the right to freedom of expression, including the communication of information between voters and candidates and to contribute to campaigns.

Access to information – Everyone has the right to seek and receive public information, helping to provide transparency in the electoral process.

Right to security of the person – Everyone has the right to security of the person, including protection from arbitrary arrest, detention, and exile. This includes protection of voters, candidates, poll workers, and observers from coercion or intimidation.

Right to an effective remedy – States are obligated to ensure an effective and timely remedy by a competent administrative, legislative, or judicial authority, including during an electoral process.

Right to a fair and public hearing – Everyone has the right to a fair and public hearing, with cases heard publicly and expeditiously by an impartial tribunal.

Following careful review of the sources and deliberation, each of these obligations has been linked to the constituent parts of the election. In this framework, the election is divided into the following ten parts, which are also summarized in the diagram below:

- 1 **Legal Framework:** The legal framework includes the rules that regulate how all aspects of the electoral process will unfold, and should ensure that the electoral process is consistent with the State’s human rights obligations. In order to avoid duplication, some aspects of the legal framework are mainstreamed throughout other parts of the electoral process (for example, issues related to the legal framework for boundary delimitation are found solely under boundary delimitation in the matrices, rather than in both boundary delimitation and legal framework).
- 2 **The Electoral System and Boundary Delimitation:** The electoral system and boundary delimitation focus on how votes are converted into mandates and how constituencies are drawn. Like the legal framework, they must be in line with a State’s human rights obligations.
- 3 **Election Management:** This includes issues largely related to the professional and impartial conduct of election activities by the election management body, as well as the structure and mandate of that body.
- 4 **The Media:** This constituent part includes not only issues related to the rights of journalists, but also to the overall media environment, media coverage, and the ability of political contestants to equitably access the media. Both public and private media should be considered, with the understanding that the rights and responsibilities of each will differ.
- 5 **Candidacy and Campaigning:** This wide-ranging constituent part includes campaign finance, the registration of candidates and political parties, and other aspects of the electoral process associated with campaigns and/or candidates and political parties.
- 6 **Voter Education:** This includes voter education and voter information efforts provided by the State, political parties or civil society.



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- 7 **Voter Registration:** This constituent part includes all aspects of the electoral process related to the registration of voters.
- 8 **Voting Operations:** This relates to election day operations and events, including aspects that facilitate voting operations such as the procurement of ballots or technology, establishing alternative means of voting, etc.
- 9 **Vote Counting:** This includes the vote counting process and all aggregation and tabulation processes through to the final announcement of results.

10 **Electoral Dispute Resolution:** The resolution of disputes is relevant throughout the electoral cycle, and includes any mechanism established to hear and adjudicate election related disputes.

The degree to which each obligation is relevant to each part of the electoral process was determined through a thorough review of the accumulated PIL sources, assessing the degree to which each obligation would have a direct impact on our understanding of that particular part of the electoral process. The table below provides a snapshot of the obligations which we have found particularly relevant to each constituent part of the election.



OBSERVING KENYA'S MARCH 2013 NATIONAL ELECTIONS

A NOTE ON SOURCES INCLUDED

The Carter Center's Database of Obligations draws from many different sources of public international law, including treaties, interpretative documents (such as comments by the United Nations Human Rights Committee or the Inter-American Court of Human Rights), political commitments, and other

sources that can provide additional evidence of state practice and emerging norms and standards. This hierarchy of sources is outlined in the table below, as well as additional information about each of these source levels.

Source Level	Definition of Source Level
Obligation	Obligations clearly codified in treaties.
Interpretation	Interpretation of treaty obligations by treaty monitoring mechanisms (such as the Human Rights Committee) or international courts (such as the European Court of Human Rights).
Political commitments	Nonbinding instruments such as declarations or other political commitments that serve as evidence of state practice and customary law.
Other sources	Handbooks, manuals, and other sources that can provide additional evidence of state practice (customary law) with regard to electoral processes.

THE CARTER CENTER AT A GLANCE

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life

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