

Kenya 2017 General and Presidential Elections

Final Report



THE
CARTER CENTER



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I Executive Summary

Kenya's 2017 general electoral process was marred by incidents of unrest and violence throughout the extended electoral period and by harsh attacks by top political leaders on electoral and judicial authorities that seriously undermined the independence of the country's democratic institutions and the rule of law. The confrontational tactics and actions of Kenya's political leaders polarized the country and exposed the deep tribal and ethnic rifts that have long characterized its politics. Regrettably, the elections represent a major setback in Kenya's democratic development.

Overview of Key Findings

Pre-election Period

The pre-election period included a reasonably adequate but flawed voter registration process, which included an independent audit and corrective actions to address some of the many errors in the list. While the voter list retained serious problems, the introduction of the Kenya Integrated Election Management System (KIEMS) biometric voter identification system provided a strong safeguard against multiple voting on election day. The level of political competition in the various races was high, and there was a significant increase in the number of independent candidates.

Aug. 8 Election

Carter Center observers found that the voting and counting processes during the Aug. 8 election were generally well-administered. However, observers

noted problems during the subsequent processes of electronically transmitting polling station results and tabulation of results at county-level tallying centers. While these were designed to allow for thorough checks and verification of election results—and should have been possible to implement—the process of tallying and tabulating final results suffered from delays and a lack of transparency. The situation was made worse by heightened political tensions and confrontational statements by political leaders.

By the morning of Aug. 9, the day after the elections, as the Independent Electoral and Boundaries Commission (IEBC) began announcing provisional results showing President Uhuru Kenyatta with a roughly 10 percent lead, opposition presidential candidate Raila Odinga and his National Super Alliance (NASA) claimed that there had been massive fraud and that the results had been hacked. On the afternoon of Aug. 9, the IEBC's nearly complete provisional results showed President Kenyatta with 54 percent of the vote, leading by a margin of some 1.4 million voters over Raila Odinga, with about 45 percent of the vote. Although the IEBC noted that the process of tallying and submitting official results forms to the national IEBC tally center was proceeding at a slow pace, it did not highlight or clarify that the results broadcast on TV were unofficial provisional results, received electronically directly from polling stations. Unfortunately, for unexplained reasons, the IEBC did not utilize the full seven-day period



John Kerry, former secretary of state of the United States, and Aminata Touré, former prime minister of Senegal, co-led the Carter Center's election mission in Kenya.

provided by the law to consolidate and post all the official polling station results forms.

Instead, the IEBC hastily declared the final presidential election results on Aug. 11, just three days after election day, based on the constituency-level results forms, and prior to the receipt of all polling-station level results forms. Worse still, election authorities failed to ensure that parties had timely access to official polling-station level results in the days following the announcement of official results, which made it impossible for parties and observers to fully verify and cross-check the results against their internal data and reports in time to include any key evidence in court petitions.

While the lack of IEBC polling-station data hindered the parties' ability to verify results, it is important to note that a Kenyan citizen election observation organization (Election Observation Group, or ELOG) conducted a parallel vote

tabulation that provided an independent verification of the official results. ELOG's tabulation was based on results data gathered from a representative random sample collected by about 1,700 observers deployed around the country. The parallel vote tabulation's estimated results, released on Aug. 11, were consistent with the IEBC's official results.¹

Supreme Court Decision

After initially refusing to take these claims to court and saying his supporters had the right to protest in the streets, Odinga and NASA decided to file a petition challenging the results shortly before the deadline. Several weeks later, in an unexpected ruling announced on Sept. 1, the Supreme Court annulled the results of the presidential election, finding that the tabulation procedures failed to fulfill the constitutional requirement that all

¹ <http://elog.or.ke/index.php/resource-centre/item/20-verification-statement-of-the-official-2017-presidential-results>

elections be “simple, secure, transparent and verifiable.” It called for the election to be rerun in “fresh” polls within 60 days. The court’s historic decision to overturn a presidential race was highly unusual and was seen by NASA as vindication of its claims of fraud and hacking, even though the court found no evidence to support either claim. Neither did the court find malfeasance on the part of staff of the IEBC.

The ruling party and others, however, criticized the ruling for not taking into consideration the fact that there was no evidence demonstrating that the alleged irregularities were of a sufficient magnitude to affect the results. While this guiding principle is commonplace in international election law, Kenya’s law at the time of the decision did not require a finding that alleged irregularities affect the results in order to annul the election.² Based on the evidence introduced regarding the lack of transparency and verifiability, and the failure of the IEBC during the court hearings to respond to legitimate concerns raised in the petition, the court was well within its bounds to annul the election results.

The Kenyan Supreme Court called for the Aug. 8 election to be rerun in “fresh” polls within 60 days.

Oct. 26 Election

In the period leading up to the Oct. 26 fresh election, the IEBC took several steps to correct shortcomings identified in the court’s ruling, including the introduction of more transparent and verifiable results tallying and transmission processes. While IEBC Chairman Wafala Chebukati indicated that the IEBC was prepared to conduct the polls on schedule, he also made clear that the continued refusal of the two leading candidates to meet jointly with the IEBC to discuss

an agreed-upon way forward constrained the IEBC’s ability to conduct a credible election. In the meantime, Odinga announced his withdrawal from the Oct. 26 election, citing a lack of real electoral reform and level playing field, and called for his supporters to boycott the Oct. 26 polls.

With several petitions before the Supreme Court, the court was scheduled on Oct. 25 to review cases that could have resulted in a decision to delay the election, which also would have allowed more time for political leaders and the IEBC to agree on any additional electoral process reforms needed to hold a competitive, inclusive, and credible election as soon as possible.

Unfortunately, however, Kenya’s political leaders missed a critical opportunity to ensure an inclusive and transparent election. The scheduled Supreme Court hearing did not take place, as only two court justices appeared, three short of the five needed for a quorum. While the circumstances surrounding the missed court hearing are disputed, the environment leading into the Oct. 26 election was marked by increased insecurity, an uncertain political environment, and an opposition boycott that resulted in a largely uncontested election.

In light of the NASA boycott, turnout for the fresh presidential election dropped significantly. In addition, voting had to be indefinitely postponed in some opposition areas because of fears of violence and related hindrances that prevented poll workers from carrying out their responsibilities. The postponement of elections in 25 constituencies because of security concerns impeded citizens’ ability to exercise their right to vote and undermined the credibility of the election. Incumbent Uhuru Kenyatta won 98.27 percent of the Oct. 26 vote.

Several civil society organizations challenged the conduct and results of the Oct. 26 election in court on a variety of grounds.³ The Supreme Court dismissed the petitions on Nov. 20, finding them without merit. President Kenyatta was inaugurated on Tuesday, Nov. 28.

2 See Steve Brickerstaff’s “International Principles of Vote Recounts and Election Contests” in *International Election Remedies*, John Hardin Young (ed), 2016, American Bar Association, p. 200; and “Electoral Justice: The International IDEA Handbook,” para. 546, p. 178.

3 Petitioners claimed *inter alia* that the IEBC failed to conduct the election in conformity with the constitution following the withdrawal of one of the

two candidates by not calling for fresh candidate nominations; that the election violated the principle of universal suffrage, given that many areas of the country did not vote; and that elections were not held in all 290 constituencies simultaneously as required by the constitution. Petitioners also alleged that the IEBC lacked the independence, neutrality, and transparency mandated by the constitution.

Aftermath

Taken as a whole, the 2017 electoral process damaged Kenya's key democratic institutions and its social cohesion, leaving the country deeply divided after an annulled presidential election, followed by a rerun election marred by violence and an opposition boycott. While Kenya was able to avoid the large-scale violence that undermined several past elections, the 2017 elections were characterized by a tense political environment throughout the electoral period, from the party primaries in April to the rerun presidential election in October. The key political leaders repeatedly took steps that harmed the process, taking hard-line positions, failing to seek common ground, and using inflammatory and divisive political rhetoric. There were multiple violent protests, more than 100 reported deaths, and many more injuries. Victims included children.

In the months since the election, there have been continued political confrontations that threaten key democratic actors, including the courts, civil society, journalists, and others. To change course, Kenya's political leaders must demonstrate the courage and foresight to prioritize actions that foster genuine dialogue and reconciliation and take concrete steps to advance Kenyans' collective interest in inclusive governance, foregoing narrow and short-term partisan interests. Political stakeholders should take action as quickly as possible to organize national stock-taking exercises and to develop and implement key electoral reforms well in advance of the 2022 election. The process should be guided by principles of inclusion and shared values grounded in the country's constitution.

Additional Findings

Legal Framework

Kenya has a generally sound and comprehensive electoral and legal framework for the conduct of democratic elections. However, the volatile electoral period exposed gaps and inconsistencies in the electoral framework and reinforced the importance of resolving legal complaints swiftly. Some last-minute changes to the legal framework that allowed the IEBC vice chairman to carry

out the chairman's duties in his absence and that reduced the quorum for IEBC meetings from five to three, allowing decisions to be taken by a vote of just two IEBC members, weakened the IEBC's authority, appeared to benefit the ruling party, and were contrary to international best practice.

The 2017 elections were characterized by a tense political environment throughout the electoral period.

Election Administration

The Independent Electoral and Boundaries Commission, appointed in early 2017, faced challenges in meeting strict constitutional and legislative deadlines for the conduct of the elections. In spite of intense political pressure from opposition and ruling parties throughout the electoral period, the IEBC successfully registered an unprecedented number of new voters, and 80 percent of voters cast ballots in August. The IEBC recruited and prepared staff despite a tight timeline and numerous court challenges affecting its work. It conducted an audit of the voter register and worked to implement some of the resulting recommendations. However, there was a lack of transparency in the IEBC's operations and inconsistent communication with electoral stakeholders and the public. The murder of Chris Msando, head of the IEBC information technology department, was still unsolved in the lead-up to the Aug. 8 election, creating a climate of uncertainty that lingered throughout the electoral period.

The breakdown in the IEBC's results transmission system in the days after the Aug. 8 election critically undermined the transparency of the tallying process and severely hindered verification efforts by parties and independent observers, leading to legitimate questions about the accuracy of the results. The Supreme Court found that the IEBC failed to transmit results electronically from all the polling stations to the national tallying center at the same time as the tally forms, in violation of Section 39(1c) of the Elections Act and

that the IEBC had used results forms of questionable authenticity. The court ruling also criticized the IEBC for failing to grant sufficient access to its computer servers during the court hearings on the NASA election petition, which was contrary to Kenya's constitutional requirement of transparency and verifiability of the electoral process. Despite efforts to improve its administration of the polls for the Oct. 26 rerun election—especially of the information and communication technologies systems for transmitting and tabulating results—the IEBC suffered from a lack of public confidence.

The campaign for the Aug. 8 general election was highly competitive.

Campaign Period

The political environment was highly polarized and divisive throughout the 2017 electoral period. Instances of violence occurred, beginning with the political party primaries and continuing through the postelection period. The campaign for the Aug. 8 general election was highly competitive. Voters had a wide choice of candidates for the majority of seats at all levels of government in the August polls. The political environment became more volatile and worsened significantly in the lead up to the Oct. 26 election, which was boycotted by opposition National Super Alliance presidential candidate Raila Odinga. Carter Center long-term observers noted a significant drop in campaign activity compared to the August polls. In those regions where campaigning took place, the Jubilee Party held large rallies, conducted car caravans, and purchased billboard ads. Several politicians from both Jubilee and NASA were arrested on hate speech charges, and reports of violence against women and other marginalized groups increased.

Political Participation

Women aspirants and candidates faced a hostile political environment, including propaganda, smear campaigns, and violence. Many lacked sufficient finances to run for office. Youth and people with disabilities also faced similar barriers to participation. Positively, nomination fees were reduced to promote participation by these special-interest groups. The IEBC established a youth coordination committee on elections to provide advice on how the commission could help ensure meaningful youth engagement. Women candidates numbered 1,300 out of a total of 14,523 candidates (9 percent), and only 172 (13 percent) were elected. Three women governors and three women senators were elected for the first time. A youth was elected governor for the first time. Eight people with disabilities were elected to office. Nonetheless, even in light of these important firsts, political participation for women, youth, and people with disabilities fell far short of international standards and failed to meet Kenya's constitutional requirements, especially the one-third gender quota. Of particular concern, women and other special-interest groups were especially vulnerable to violence.

Electoral Dispute Resolution

Kenyan legislation on dispute resolution is complex, involving multiple resolution bodies with, at times, overlapping jurisdiction and inconsistent deadlines. While courts prioritized election-related cases and resolved most of the disputes in a timely fashion, the lack of a single appeals process, combined with short timelines for resolving pre-election disputes, failed to guarantee an effective and timely remedy. This was particularly a problem for challenges regarding the party primaries, candidate nominations, and candidate registration. For future elections, Kenya's Parliament should consider extending the deadline for the Supreme Court to resolve challenges to the results of a presidential election from the current 14 days to a minimum of 30 days to allow for thorough consideration of all issues and sufficient time for verification exercises. These and other amendments should flow from broad political consultation and enjoy wide political support.

Role of Civil Society

Civil society organizations and faith-based groups engaged in a robust manner, conducting voter education and peacebuilding efforts prior to the elections. Many groups observed the entire electoral period, covering both the Aug. 8 and Oct. 26 elections, releasing reports on findings and recommendations for reforms. However, engagement from civil society organizations was less visible for the Oct. 26 polls. Concerns were raised about constraints on civil society in the postelection period, as the government threatened the registration of two prominent Kenyan human rights organizations. Following an outcry by local civil society organizations and the international community, the acting interior Cabinet secretary halted the deregistration process to allow for further investigations.

The Security Situation

Over the course of the extended electoral period, observers voiced concerns on multiple occasions about excessive use of force by security personnel. Several people, including children, died in post-election violence during clashes with security forces. The charged campaign environment, coupled with the violent protests and excessive use of force by security, increased the vulnerability of special-interest groups, especially women and children. Following the Aug. 8 elections, there were reports of human rights violations, including beatings and killings by security forces as well as sexual violence against women and girls. Multiple organizations and agencies joined an appeal to the inspector general of police and other government agencies charged with protecting the rights of women and girls, raising concerns about sexual violence perpetrated in the electoral period, reportedly by police officers.

The security situation deteriorated further in the period leading up to the Oct. 26 fresh election, as many opposition politicians stated that they would not allow the election to take place in their areas and Odinga began a campaign to encourage his supporters to boycott the election. Election day itself was marred by violent protests in NASA's strongholds in western regions of the country and

in Nairobi's volatile slum neighborhoods. The IEBC could not deliver election materials to some of these areas because of blocked roads. Some of the polling staff in the affected areas did not show up for work. As a result, the IEBC postponed the election by two days in the four counties where polls were unable to open. Polling in these locations was later postponed indefinitely after it became clear that the security situation would not improve sufficiently in the days following the election.

The Carter Center's Election Observation Mission in Kenya

The Carter Center deployed a core team of experts and long-term observers in Kenya in April 2017 to monitor key parts of the electoral process, including voter registration, campaigning, electoral preparations, and the resolution of disputes in the courts. For the Aug. 8 elections, former U.S. Secretary of State John Kerry and former Senegalese Prime Minister Aminata Touré led a short-term election observation mission that included more than 100 observers from 34 countries. Observers traveled throughout the country to assess the balloting, counting, and tallying processes.

Following the Sept. 1 decision by the Supreme Court to annul the August election, The Carter Center extended its presence to observe the Oct. 26 presidential rerun. Long-term observers were redeployed to various locations in the country to observe critical pre- and postelection processes. Because of the insecurity surrounding the polls, the uncertain political environment, and the lack of a fully competitive election, the Center did not deploy a short-term observer delegation for the October polls. The team was limited in size and geographic scope and, therefore, did not conduct a robust assessment at the polling-station level on election day.

The Center conducts its observation missions in accordance with the Declaration of Principles for International Election Observation, which was endorsed by the United Nations in 2005. The Center's mission for the 2017 Kenya elections assessed the process based on Kenya's legal



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The Carter Center's team of observers hailed from 34 different countries of origin and included electoral experts, civil society advocates, and academic specialists in Kenya and the region.

framework and on international standards for democratic elections.

The Center issued multiple public statements at various points during the electoral process, including a pre-election statement on July 27, a preliminary statement about the Aug. 8 election on Aug. 10, a statement regarding the tabulation process on Aug. 17, and two statements on the Supreme Court ruling and its implementation on Sept. 1 and Oct. 4. A pre-election statement was

issued on Oct. 24 and a preliminary statement on the Oct. 26 election on Nov. 6. These public statements are available at www.cartercenter.org. (Also see Appendix I.)

This report presents the Carter Center's comprehensive findings and conclusions for Kenya's 2017 electoral period and offers recommendations to help strengthen Kenya's future electoral processes.

I Political Background

The dynamics of the 2017 general elections were heavily influenced by the political and electoral events of the last decade. The elections were the third since 2007, taking place a decade after Mwai Kibaki was re-elected in December 2007 amid charges of vote-rigging from Orange Democratic Movement candidate Raila Odinga. Postelection violence erupted, in which more than 1,000 people died. Former U.N. Secretary-General Kofi Annan led an African Union-sponsored mediation effort and brokered a power-sharing accord in February 2008. The accord brought Odinga into government in the position of prime minister and included a broad reform agenda, the centerpiece of which was constitutional reform.

In August 2010, Kenyans overwhelmingly adopted a new constitution in a national referendum. The new constitution introduced additional checks and balances to executive power as well as significant devolution of power and resources to 47 newly created counties and created the position of deputy president. It also eliminated the position of prime minister following the first presidential election under the new constitution, held in March 2013.

The 2013 general elections were the first administered by the new Independent Electoral and Boundaries Commission created under the 2010 Constitution. The presidential elections were effectively a contest between Uhuru Kenyatta of the National Alliance and Raila Odinga of the

Orange Democratic Movement. Kenyatta was backed by the Jubilee Alliance (which later formed the Jubilee Party), while Odinga was supported by the Coalition for Reforms and Democracy. Kenyatta defeated Odinga in a very tight race, crossing the constitutional threshold of 50-percent-plus-one required to avoid a runoff by a mere 63,115 votes (if counting only valid votes cast). Odinga alleged fraud and challenged the election results in court.⁴ The Supreme Court upheld Kenyatta's victory.

The 2013 general elections were the first administered by the Independent Electoral and Boundaries Commission created under the 2010 Constitution.

Concerns noted during the 2013 election included questions about the accuracy of the voter register, the failure of technology during results transmission, and various delays in implementation of the electoral calendar, among other issues. Electoral stakeholders looked closely at these aspects of electoral administration in preparing for the 2017 elections.

⁴ The margin would have been only 8,632 votes if spoiled ballots were included in the count of total votes. The Supreme Court ruling that upheld

Kenyatta's victory determined that vote shares were to be based on valid votes cast, not including spoiled ballots.

As in 2013, the 2017 election was a hotly contested race between President Kenyatta (with Deputy President William Ruto as his running mate) and Raila Odinga (with Kalonzo Musyoka as his running mate). The opposition National Super Alliance led by Odinga included the Orange Democratic Movement, the Wiper Democratic Movement, the Amani National Congress, and Ford–Kenya. President Kenyatta aimed to secure a second term, and Odinga sought to claim the presidency, which he and his supporters believed had been stolen from him in the previous two elections.

The current IEBC commissioners began serving in January 2017, following the resignation of the previous commission due to pressure from the opposition, which claimed that the commission was operating in a partisan manner and had not administered the 2013 elections in a fair and equitable manner. The new IEBC faced several challenges, including a compressed electoral calendar and questions regarding transparency and capacity, amid numerous legal cases that impacted its work.

I Electoral System and Legal Framework

The establishment of a clearly defined electoral system based in law is an essential component for holding genuine democratic elections and is necessary for the effective administration of democratic elections that adhere to national and international standards.⁵

Kenya's Legal Framework for Elections

Kenya has ratified major international instruments that cover electoral rights and uphold compliance with these treaties through its constitution.⁶ Elections are primarily regulated by the 2010 Constitution; the 2011 Election Act, last amended in 2017; the Independent Electoral and Boundaries Commission Act of 2011; the 2011 Political Parties Act; the Public Order Act, last amended in 2014; and other acts.⁷

Kenya has a generally sound and comprehensive electoral and legal framework for the conduct of democratic elections. However, the volatile electoral period exposed gaps and inconsistencies in the electoral framework and reinforced the importance of resolving legal complaints

swiftly. Some late changes to the legal framework—introduced at the last minute, contrary to international best practice—weakened the IEBC's authority and appeared to benefit the ruling party (e.g., allowing the IEBC vice chairman to carry out the chairman's duties in his absence and reducing the quorum for IEBC meetings from five to three, allowing decisions to be made by a vote of just two IEBC members). These actions and the negative reaction to them underscored the need for transparency and public consultation on reforms to support a genuine and trusted process.

Looking forward, steps should be taken to eliminate the overlapping jurisdictions of the IEBC and the Political Parties Dispute Tribunal; to reduce deadlines for the resolution of electoral disputes, including candidate nominations; to introduce regulations or procedures for resolving election-day disputes; to apply consistent timelines for voter registration that will also allow for a timely verification and audit of the voter register; and to clarify nomination criteria and some election-day procedures.

5 U.N. Human Rights Committee (HRC), CCPR, 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 Article 25 and must guarantee and give effect to the free expression of the will of the voters." The UNHRC Comment 19 indicates that "... elections must be conducted fairly and freely on a periodic basis within a framework of laws guaranteeing the effective exercise of voting rights."

6 Article 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." Kenya has ratified major international instruments that

cover electoral rights, including the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (AfCHPR), the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 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 (AfCHPR-PW), and the Convention on the Rights of Persons With Disabilities.

7 The new 2016 Election Offenses Act replaced Part VI of the Elections Act 2011.



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Despite long lines at many polling stations, voters waited patiently to cast a ballot during the Aug. 8 polls. Participation dropped significantly during the presidential runoff.

2017 Election System

Kenyan voters cast six ballots on Aug. 8: for president, National Assembly, senators, governors, members of county assemblies, and National Assembly women representatives. The 2010 Constitution made significant changes in the shape of the government and created a new administrative structure for the country. The constitution devolved power to county assemblies and governors. All elections apart from the presidential are held under the first-past-the-post system.⁸ Citizens vote directly for the president in one nationwide constituency for a five-year term. The winning candidate must receive 50 percent plus one of the votes cast nationally and at least 25 percent

of the votes cast in 24 of the 47 counties.⁹ If no candidate achieves this majority in the first round, the constitution states that a runoff must be held “within 30 days after the previous election” between the two leading candidates. In case of nullification of the presidential election, a fresh election is held within 60 days from the date that the court nullifies the results.

Recent legislative changes addressed several key issues, including restricting the practice whereby a candidate who loses a party primary switches parties in order to secure a nomination, known as “party hopping”; introducing an independent audit of the voter register; and extending deadlines for consideration of complaints by the IEBC to 10 days, among others.¹⁰ Notwithstanding

⁸ Article 138 of the constitution

⁹ Following the petition challenging the 2013 presidential election results filed by Odinga, the Supreme Court held that rejected votes should not be included in the count and that the law needed to be further clarified. However, no amendments were passed in this regard. Article 138 of the 2010 Constitution of Kenya

¹⁰ Additional amendments decreased the number of voters per polling station from 1,000 to 700 and provided for registration of prisoners. Moreover, amendments to Section 22 of the Elections Act raised the academic requirements for parliamentarians to a university degree but suspended the application of the new requirements until after the 2017 general election. This amendment was passed despite a High Court decision that declared degree requirements for members of Parliament unconstitutional.

these improvements, several aspects of the legal framework on elections remained vague, including nomination rules, particularly those regarding candidate eligibility and signature requirements. In addition, the regulations for resolving election-day disputes were lacking, and the timelines for conducting voter registration and the subsequent verification and audit of the voter register were inadequate, resulting in a shortened voter registration period and potential disenfranchisement of voters.

Critically, the absence of campaign finance legislation undermined transparency in campaign spending and likely gave significant advantage to the wealthiest candidates and parties. Moreover, the Parliament failed to fulfill its constitutional obligation to enact a rule that says that no more than two-thirds of any elected body can be of the same gender, despite several court decisions compelling it to do so.¹¹ This failure undermines the constitution and the right of women to participate in formulation of government policy, as required under Kenya's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.

Prior to both the Aug. 8 and Oct. 26 elections, some polling-day procedures, including criteria for determining the validity of ballots, were still unclear, and IEBC officials provided inconsistent information to poll workers during trainings.¹² The IEBC and the courts made key decisions about the electoral framework very late in the electoral calendar prior to both the Aug. 8 and Oct. 26 elections, which affected the uniform application of procedures and contributed to legal uncertainty prior to the poll date. On several occasions prior to the Aug. 8 election, the courts declared some of the provisions of IEBC regulations unconstitutional, including the verification and modification of presidential results by the IEBC, the requirement that support signatures for independent

candidates be submitted by nonparty members, and the obligation of public officers contesting the elections to resign from their government jobs at least six months before an election.¹³ Although no formal changes were made to the regulations, the IEBC adapted its procedures to align with these legal rulings.

Article 138 of the constitution refers to the procedure of a runoff as “fresh elections,” contributing to legal uncertainty. The question of exactly what is entailed in a fresh election and whether there should be a new candidate-nomination process became critical after nullification of the Aug. 8 presidential election. Unfortunately, neither the constitution nor the Kenya Elections Act provides sufficient clarity about these and other key questions and procedures related to fresh elections.

Article 138 of the constitution refers to the procedure of a runoff as “fresh elections,” contributing to legal uncertainty.

In response to a petition, the High Court of Kenya ruled on Oct. 11 that the 60-day period within which the fresh election must be held was not adequate to conduct new nominations and, therefore, the candidates who participated in the invalidated Aug. 8 election were qualified to contest the Oct. 26 fresh presidential election. The Supreme Court confirmed that the law lacks clarity in this regard and ruled that because the fresh election was a continuation of the previous electoral process, only those candidates validly nominated for the nullified election were able to stand.

11 The constitution stipulates that not more than two-thirds of the members of any appointive or elective body should be of the same gender. Kenya Constitution, Article 81(b)

12 The IEBC issued conflicting clarifications on the validity of correctly marked but unstamped ballot papers. On Aug. 3, through an internal memo, the IEBC directed returning officers, constituency returning officers, and deputy returning officers to consider unstamped ballots as valid. Two days later, it reversed its opinion.

13 The ruling of the High Court on April 7, 2017, nullified Sections 39(2) and (3) of the Elections Act and Regulations 83(2) and 87(2)(c) of Elections (General) Regulations 2012. Sections 29 and 43(5) of the Elections Act were declared unconstitutional. The Employment and Labor Relations Court ruled that civil servants do not have to resign their positions to stand as candidates in an election.

Late Changes to Legal Framework

Last-minute changes to an electoral law in the lead-up to an election are contrary to good electoral practice, especially in the absence of political consensus. Amendments were made to the electoral law in January 2017, only eight months before the Aug. 8 election. In addition, amendments to the regulations were submitted to Parliament in early March, just five months ahead of elections, and were quickly passed, which did not leave time for effective and inclusive public consultation, contrary to international good practice.

Last-minute changes to an electoral law in the lead-up to an election are contrary to good electoral practice, especially in the absence of political consensus.

Moreover, on Sept. 27, only one month before the fresh elections, the ruling party introduced further amendments to the Elections Act, stating that they were necessary to address some of the problems cited by the Supreme Court in its ruling that annulled the results of the Aug. 8 presidential election. However, the Supreme Court's ruling had found that it was the implementation of the law that was at fault and not the law itself. Indeed, Wafula Chebukati, IEBC chairman, stated that changing the law at such a late stage would impose substantial challenges for the organization of the fresh election. Unfortunately, once again, the ruling party passed the amendments in

an expedited manner in parliamentary sessions boycotted by the opposition, with no time for effective and inclusive public consultation.¹⁴ The amendments further complicated the IEBC's efforts to achieve consensus between the two leading presidential candidates on the procedural changes necessary to comply with the ruling of the court.¹⁵

The amendments were sent to the president for signature on Oct. 13. Although the president refrained from signing the law, reportedly because of the lack of national consensus and the perception that the changes would give his party an unfair advantage, the amendments nonetheless became law on Nov. 2, after being published in the official gazette.¹⁶

Some of the amendments diminished the independence of the IEBC by introducing procedures that reduced the IEBC's accountability and inclusive decision making. For example, the amendments provided for the possibility of the vice chairman carrying out the chairman's duties in his absence and reduced the quorum for IEBC meetings from five members to three, making it possible for two members to make decisions.

Another amendment made it more difficult to overturn an election in court by raising the evidentiary bar for challenging election results and mandating that the Supreme Court find that alleged irregularities in an election affect the results before annulling an election on procedural grounds. While this amendment made Kenya's law more consistent with broad international practice and provided greater assurances that the will of the voters will be respected, the manner in which it was passed—shortly before the presidential rerun and without political consensus—reinforced the divisive nature of the polls.¹⁷ Three petitions challenging the legality of the bill were filed with the

14 2001 Protocol on Democracy and Good Governance, The Economic Community of West African States (ECOWAS): "No substantial modification shall be made to the electoral laws in the last six months before the elections, except with the consent of a majority of political actors. The Code of Good Practice in Electoral Matters of the Venice Commission states that "the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions, and the drawing of constituency boundaries, should not be open to amendments less than one year before an election." Point II.2.b

15 An elections law amendment bill was tabled in Parliament on Sept. 27. The bill was discussed on Sept. 28. Opposition members of Parliament

forced Deputy Speaker Moses Cheboi to call for physical voting after they lost the first round of voting by acclamation.

16 The bill was published in the official gazette and entered into force on Nov. 2.

17 On the principle requiring that alleged irregularities should be demonstrated as having affected the outcome before results can be annulled, see Steve Brickerstaff, "International Principles of Vote Recounts and Election Contests," in *International Election Remedies*, John Hardin Young (ed), 2016, American Bar Association, p. 200; and "Electoral Justice: The International IDEA Handbook," para. 546, p. 178.



A voter searches for his name on the register posted outside his polling station. Leading up to the elections, the opposition expressed concern regarding the accuracy of the voter registry. An independent audit was conducted, and several steps were taken to address the errors in the registry.

High Court, requesting their suspension pending determination of the court.¹⁸

Summary

While Kenya's electoral and legal framework is generally strong and provides for the conduct of democratic elections, the compressed timeline for implementation of the polls and the contentious political environment exposed several gaps and inconsistencies in the electoral framework that should be reformed through a genuinely transparent process that includes broad public consultation conducted well in advance of the

2022 electoral cycle. These steps could help increase public confidence in the IEBC. Moving forward, electoral reform is needed to effect some key changes. Reforms should clarify the jurisdiction of the IEBC and the Political Parties Dispute Tribunal; shorten deadlines for the resolution of some electoral disputes, including candidate nominations; introduce regulations or procedures for resolving election-day disputes; apply adequate timelines for voter registration and related audits and verification exercises; and clarify nomination rules and some election-day procedures.

¹⁸ On Dec. 5, 2017, the High Court suspended the bill and scheduled a hearing for March 16, 2018.

I Election Administration

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 and that international human rights obligations pertinent to the electoral process are upheld.¹⁹ Best practice indicates that an election management body should ensure accountable, efficient, and effective public administration as it relates to elections.²⁰

Elections in Kenya are administered by a four-tiered structure – the Independent Electoral and Boundaries Commission, constituency election offices, county offices, and polling stations.

In its July 27 pre-election statement, The Carter Center commended the Independent Electoral and Boundaries Commission for its preparations for the Aug. 8 election despite many challenges. However, it called on the IEBC to take steps to improve communication and transparency. Despite a chaotic party primary process, political competition was high, including a significant increase in the number of independent candidates. The level of election-related violence, including harassment and intimidation of candidates and supporters as well as reports of violation of the Code of Conduct, were of concern. The Center urged sufficient testing of the Kenya Integrated Elections Management System as a means to increase public confidence in the electoral process. Despite the strong provisions in the constitution to increase the participation of women, youth, and people with disabilities, these groups faced serious obstacles to participation.

Election Administration Structures

Elections in Kenya are administered by a four-tiered election administration, comprised of the

¹⁹ UNHRC, CCPR, General Comment 25, para. 20 requires that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially, and in accordance with established laws that are compatible with the covenant.”

²⁰ AU; African Charter on Democracy, Elections, and Governance; Article 32(1); Venice Commission, Code, Sec. II.3.1.c



Nathan Siegel

On voting day, a polling official checks a voter's fingerprint against the biometric database. While the polling staff encountered some difficulties in reading prospective voters' fingerprints, the biometric registry helped to alleviate concerns regarding multiple voting.

IEBC in Nairobi, 290 constituency election offices, 47 county offices, and 40,883 polling stations.²¹ The IEBC is the principal institution responsible for oversight of the electoral process, with a broad constitutional mandate. The current commissioners were appointed in late January 2017, eight months before the general election, following opposition demonstrations and street protests calling for the removal of the previous commissioners. While there was a complete turnover of commissioners, Ezra Chiloba, chief electoral officer, was appointed in 2015. In addition, several technical staff who administered the elections in 2013 remained in their positions for the 2017 elections.

Transparency in Election Information

Although the newly appointed IEBC commissioners started with a clean slate, they were burdened with the distrust that affected their predecessors and a compressed timeline in which to organize the elections. The IEBC provided intermittent public updates on election planning during the electoral period.

Prior to the Aug. 8 election, the IEBC held a national election conference over several days to report on election planning. Notwithstanding these commendable efforts, the IEBC continuously failed to meet its constitutional obligation of transparency during the extended electoral period. It did not inform the public of its decision-making

²¹ Forty-seven county IEBC offices replaced 17 regional offices, resulting in an increased coverage of the country. The IEBC permanent field staff were

rotated to enhance trust in their impartiality and accountability.

processes and consistently failed to publish the minutes of its meetings and its internal voting records.²² Despite urging by diverse stakeholders, including The Carter Center, the IEBC failed to communicate clearly and regularly about the status of preparations, challenges, and plans for addressing issues proactively. This lack of transparency negatively affected the confidence and trust of the electorate, civil society actors, and political parties in the work of the IEBC.²³

Although Carter Center long-term observers enjoyed full access to IEBC personnel at the local level, access by core staff at the national level was erratic. IEBC officials provided limited and conflicting information, suggesting that some lacked a uniform understanding of the law and procedures. While reiterating its open-door policy throughout the process, the IEBC either failed or refused to provide copies of their decisions to the Center on numerous occasions.²⁴

Although voting-day processes were generally well-administered, concerns surfaced during the tabulation and transmissions processes.

Electoral Preparations

The IEBC worked diligently to prepare for the Aug. 8 and the Oct. 26 elections, despite a limited time frame to prepare for both and significant legal and other challenges faced throughout the electoral period. Procurement of critical election materials, including ballot papers, was also

hampered by the late appointment of the commissioners and legal challenges to the procurement process. Despite a compressed time frame, IEBC recruited and prepared polling staff to implement the electoral process on election day. The IEBC established 40,883 polling stations, each capped to serve no more than 700 voters. This represented a 25 percent increase from 32,613 polling stations in the 2013 polls.

Prior to the Aug. 8 poll, Carter Center long-term observers followed the recruitment of polling officials in several constituencies across Kenya and evaluated the overall process as positive. Polling officials blacklisted in 2013 for their performance were not eligible to apply.²⁵ Poll workers who did not perform their duties satisfactorily for the Aug. 8 election were not rehired for the Oct. 26 election.

The IEBC conducted training for its staff in line with the electoral calendar prior to Aug. 8, and the process was largely positive. Carter Center observers assessed the training as well-organized, comprehensive, and interactive. While all workshops followed the same agenda, in some instances trainers relayed inconsistent information about the marking of ballots, the participation of agents, and the validity of ballots, among other issues. Nonsensitive election materials were largely distributed on time, albeit sometimes unevenly, and IEBC personnel were reportedly reactive and swift in addressing these problems. The weakest aspect of the training for the Aug. 8 election related to the tabulation and results transmission process, which manifested itself as a major problem on election day. Although voting-day processes were generally well-administered, concerns surfaced during the tabulation and transmissions processes.

22 The IEBC Act, Second Schedule, para. 10 requires that the IEBC keep minutes of all meetings. Para. 19 of the 2011 UNHRC General Comment No. 34 to Article 19 of the ICCPR states, "To give effect to the right of access to information, states' parties should proactively put in the public domain government information of public interest. States' parties should make every effort to ensure easy, prompt, effective, and practical access to such information." U.N., UNCAC, Article 13(1)(a); AU, Convention on Corruption, Article 12(2); CoE (Venice Commission), Code of Good Practice, sec. II.3.1.80

23 Article 81 of the constitution sets out transparency as one of the main principles of free and fair elections. Para. 19 of the 2011 UNHRC General

Comment 34 to Article 19 of the ICCPR calls on states' parties to proactively provide access to information on issues of national importance.

24 These included all the decisions following resolutions of disputes as well as the decision on suspension of the campaign taken by the Siaya County returning officer as reportedly directed by the management.

25 After the time frame for hiring had passed, Carter Center observers noted that the selection process had not been finalized in some areas (Nairobi, Narok, Killifi), and recruitment had to be reopened because of a lack of sufficient qualified candidates. One reason given for this deficiency was that the application was online, which prevented some potential candidates from applying.

The Kenya Integrated Election Management System

The 2016 legislative amendments in the Elections Act required the establishment of an integrated electronic system covering all aspects of biometric voter identification and registration, candidate registration, and transmission of results. It also required the IEBC to test the new system—the Kenya Integrated Election Management System or KIEMS—at least 60 days before the elections. However, the procurement of the KIEMS and ballot papers was delayed by legal challenges. The initial kits arrived on April 14, and delivery was completed in early June. The staggered and late delivery of KIEMS negatively impacted the voter verification process.

The IEBC conducted a limited test by the legal deadline and held a countrywide simulation on Aug. 2, less than a week before the Aug. 8 general elections. Though all counties took part in the simulation, the IEBC opted to display results from only a limited number of counties. This reversal of their stated plans detracted from the transparency of the process and decreased public trust in the operation of the system. More intensive testing and posting of results might have revealed the deficiencies that contributed to the failure of the results transmission during the Aug. 8 election. No nationwide KIEMS simulation was conducted prior to the Oct. 26 fresh election.

Preparations for the Oct. 26 Election

While the IEBC took preliminary steps to address the weaknesses cited by the Supreme Court in its Sept. 1 ruling, the court did not release its detailed judgment until Sept. 20, leaving less than a month to enact reforms and exerting great pressure on the commission. The period before the Oct. 26 election was marked by a continued lack of transparency, limited communication, and a more pronounced dysfunctional internal operation of IEBC, which further reduced an already fragile public confidence and trust in its work.

The internal disorganization and disagreements within the IEBC spilled out into the public when, on Oct. 18, Roselyn Akombe, IEBC commissioner,

resigned and left the country, alleging that the IEBC had become a party to the electoral and political crisis and that commissioners were voting along partisan lines. Akombe maintained that in the current political environment “the elections as planned cannot meet the basic expectations of a credible election.” This assessment was supported by Wafula Chebukati, chairman, on Oct. 18, when he said that although the commission was technically ready to administer the polls, political agreement and critical changes in key secretariat staff were needed for him to commit to serving as the national returning officer and to hold a free, fair, and credible election.

In addition to the internal divisions, the IEBC faced a volatile and polarized political environment throughout the electoral period. This environment intensified prior to the Oct. 26 election as the

The polarized environment intensified prior to the Oct. 26 election as the main political actors became more entrenched in their positions.

main political actors became more entrenched in their positions. The Jubilee Party stated that it had no requests for any procedural reforms, and party officials, including the president, pushed for the Oct. 26 election to take place as scheduled, despite numerous legal challenges.

Meanwhile, NASA presented a set of demands known as its “irreducible minimums” to be met before it would participate in the election. These included the replacement and prosecution of IEBC staff they saw as responsible for the problems that led to the nullification of the Aug. 8 election, securing new companies to print the ballot and results forms, and designing and overseeing the electronic results transmission platform. Some of the demands could not realistically be met during the time frame allotted. Others would have impinged upon the IEBC’s independence.

For example, the IEBC refused to replace OT Safran/Morpho, the information technology company that supplied the software for the electronic results transmission system, despite NASA demands to do so, given the tight time frame involved. However, in response to the opposition's request to fire IEBC personnel, the IEBC chairman did exclude some key personnel from the project team set up to oversee the election. One week prior to the election, Ezra Chiloba, chief executive officer, one of the key staff whom NASA blamed for the initial election's irregularities, announced his departure on a three-week leave.

Although Chairman Chebukati stated on Oct. 19 that the IEBC was technically ready to administer the elections, he insisted that the two principal presidential candidates sit down together with the IEBC to discuss pending issues and work out a way forward to allow credible elections to take place on Oct. 26. He extended an open invitation to host a joint meeting with the two leaders. Regrettably, because of the intransigence of the two main political leaders, this meeting never took place.

Following the elections, the Independent Electoral and Boundaries Commission implemented corrective measures that improved the Oct. 26 election process, despite the deteriorating political environment.

In response to the court's findings regarding tabulation and transparency of results data, the IEBC took several positive steps to address problems that arose during the Aug. 8 election. It standardized polling-station and constituency-result forms (forms 34A and 34B, respectively); reconfigured the KIEMS system to transmit scanned images with numerical results only; and provided observers and parties with read-only access to servers, databases, and logs. These steps

proved crucial for the improved transparency of the Oct. 26 election.

Prior to the Oct. 26 election, the IEBC held a joint training for county election managers, returning officers, and deputy returning officers to introduce staff to the new procedures and corrective measures taken to address the irregularities and illegalities identified by the Supreme Court. IEBC trainers paid particular attention to tallying, data entry, and transmission procedures, and effectively communicated the procedural changes to polling staff. The IEBC produced updated training materials and quick reference guides, which were particularly helpful to IEBC poll workers and staff on election day. Further, the IEBC issued detailed gazette notices on the results transmission at all levels and put complementary mechanisms in place. These actions helped to improve the results management process significantly during the Oct. 26 elections.

However, the divisive political environment greatly affected IEBC staff at the polling-station level for the Oct. 26 election. The calls for a boycott by the opposition hampered the ability of the IEBC to recruit and train poll workers. Polling officials were harassed and intimidated. In some areas, simply showing up for work was perceived as supporting the holding of the polls on Oct. 26. In the week before the election, IEBC trainings were attacked and disrupted by gangs of youth in Kisumu, Viniga, Siaya, Homa Bay, Migari, and parts of Kakamega County.

Summary

Kenya partially fulfilled its obligations to establish an independent and impartial election management body. The IEBC conducted two elections within a 10-month period despite its late start and in the face of significant internal and external challenges, including numerous court petitions, that affected its administration of the elections. The challenges were magnified after the murder of the head of the information technology department, Chris Msando, on July 29, which greatly affected the IEBC and its staff.²⁶

²⁶ The murder of Msando remains unsolved as of the editing of this report in February 2018.



A woman places her vote in its color-coordinated ballot box. Turnout for the Aug. 8 election reached 80 percent.

The Aug. 8 elections were undermined by a series of problems in the tabulating and transmitting results. Following the elections, the IEBC implemented corrective measures that improved the election process on Oct. 26, despite the deteriorating political environment and external pressures on the IEBC and its staff. Pressures included intimidation and threats to IEBC staff before the Oct. 26 election and a multitude of court cases challenging each step of the process.

Notwithstanding the corrective steps, the IEBC's continued lack of transparency in decision making and its inefficient communication strategy hindered the IEBC throughout the electoral period. This lack of transparency and failure to provide sufficient public information

are contrary both to international standards and to Kenya's constitutional requirement that elections be transparent. These failures damaged public confidence in the IEBC and its ability to administer the polls. In addition, late decision making about electoral procedures contributed to incomplete and inconsistent training for IEBC officials and poll workers.

Most significant in terms of the credibility of the elections, the IEBC failed to provide stakeholders with sufficient means to independently verify key aspects of the information and communications technology systems, especially the tallying and tabulation of results during the Aug. 8 elections. This played a key role in fueling distrust in the electoral process and the official results.

Election Day, Tabulation, and Results Transmission

International standards protect citizens' right to vote and call on states to ensure that voting takes place in an environment in which the security of the process and the safety of voters are assured.²⁷ Reporting and transmission of results should be transparent, with partisan and nonpartisan observers having meaningful access to the voting and results tallying processes.²⁸

The Aug. 8 election day in Kenya was characterized by a generally peaceful environment. In contrast, protests and violence prevented polling in opposition-leaning parts of the country on Oct. 26.

The Aug. 8 election day in Kenya was characterized by a large voter turnout and a generally peaceful environment. Voters waited patiently in long lines to cast their ballots, and party agents were present in 99 percent of the polling stations observed by Carter Center teams.

In stark contrast, protests and violence prevented polling in opposition-leaning parts of the country on Oct. 26, and turnout dropped by half. While the tallying and results transmission

process suffered significant flaws in August, the IEBC improved these processes significantly for the Oct. 26 polls. Political party agents and domestic observers were present for both elections, although in smaller numbers for the Oct. 26 presidential polls. National Super Alliance agents were mostly absent on Oct. 26 because of the party's boycott of the election.

It is important to emphasize that the Oct. 26 election day was marred by violent protests in the western regions of the country, a NASA stronghold, and in Nairobi's volatile slum neighborhoods. The IEBC could not deliver election materials to some of these areas because of blocked roads. Some of the polling staff in the affected areas did not show up for work, reportedly because of intimidation. As a result, the IEBC postponed the election for two days in four counties—Kisumu, Homa Bay, Siaya, and Migori—where polls were unable to open.²⁹ Polling in these locations was later postponed indefinitely after it became clear that the security situation would not improve sufficiently in the days following the polls to allow voting to take place.

27 UNHRC, CCPR, Articles 9 and 25; AU, AfCHPR, Articles 6 and 13(1)

28 UNHRC, CCPR, Article 19(2) and General Comment 25, para. 20; AU, Convention on Corruption, Article 9 and ACDEG, Articles 19–22

29 Article 55(b) of the electoral code allows the IEBC to postpone an election in a constituency, county, or ward if there is reason to believe that a serious breach of peace is likely to occur if the election is held or it is

impossible to conduct the elections as a result of natural disaster or other emergencies. If the IEBC is satisfied that the results in the affected areas would not change the result from the rest of the country—that is, if the margin of victory is larger than the number of votes in the affected areas so that even if there were elections held in those areas the results would not change—it can declare a winner without the results from the affected areas.

In its Aug. 10 preliminary statement, The Carter Center found election-day voting and counting processes functioned smoothly. However, the electronic transmission of results from the polling stations to constituency centers, where official results are tallied, proved unreliable. The Center urged the IEBC to continue to collect and publish results transparently until the process was concluded and to ensure that all parties and their agents enjoyed full access to the IEBC's tallying processes at all levels to review any discrepancies. The Center urged candidates and parties to use established legal channels to resolve disputes and to call on supporters to remain calm.

Aug. 8 Election Day

The Carter Center deployed a full short-term observation delegation for the Aug. 8 election day. The Center observed polling in 39 counties, covering 424 polling stations in 185 constituencies.³⁰ Election day was mostly calm and peaceful, with high voter turnout and well-managed polling, with minor instances of irregularities. While the Kenya Integrated Election Management System (KIEMS) devices generally functioned properly to identify voters, in a limited number of cases, the devices were unsuccessful in recognizing the voter's fingerprint, causing polling staff to have to search for their voter information alphanumerically in the KIEMS system. Observers noted that polling staff did not consistently fill out a "supervisory form" (32A) to document the voter, as required, in these instances. Some polling stations lacked sufficient quantities of the form.³¹

Closing procedures were well-administered in over 80 percent of the 424 polling stations visited.

Three teams found that IEBC staff poorly administered the counting process. Carter Center teams gathered counting data from 36 polling stations on election day. The results from 34 of the 36 polling stations were consistent with forms 34A (polling-station results form) and 34B (constituency-level results form) posted officially on the IEBC website.³²

After the polls closed, Carter Center observers visited 37 tallying centers from Aug. 8 through Aug. 9. Observers reported that the work was slow, and many IEBC officials were fatigued. Despite an initially chaotic process in some centers, most were managed in a transparent manner. In many tallying centers, officials entered the results data into Excel spreadsheets and then transferred the data to the constituency-level result form. Only 30 percent of Carter Center teams observed copies of

Closing procedures were well-administered in over 80 percent of the 424 polling stations that The Carter Center visited.

the form 34A that were received as scans from the polling stations. Two-thirds of the teams reported observing the original paper 34A forms, which were being scanned at the constituency tally center because of problems with the KIEMS system or connectivity that prevented them from being sent electronically from polling stations.³³

In most centers, officials announced the results. However, there were multiple instances in which the results were not displayed, or the displayed results reflected the results posted at the national level rather than the constituency level. Teams in two constituency tally centers found the process lacked credibility because of discrepancies between

30 The Center did not deploy short-term observers to Wajir, Tana River, Lamu, Garissa, Marsabit, Turkana, and Samburu counties.

31 Carter Center observers reported limited instances in which the Kenya Integrated Management System was not used, and poll workers used the complementary mechanism (form 32A) in half of these instances. A small number of polling stations reported not having sufficient quantities of the form to meet the need.

32 In two cases with discrepancies, Odinga's results were less by one vote than the number indicated in forms 34A and 34B.

33 At stations in Kilifi North, the KIEMS devices were not working sufficiently because of poor internet connections. There were only hard copies of the results forms available with no electronic transmission. Stations in Ol Jorok also experienced difficulties with electronic transmission because of limited internet coverage.



Party agents record and take photos of the serial numbers on each seal. Later, seals will be checked at the constituency tally center to ensure there has been no tampering.

the results announced locally and those displayed at the national tally center at Bomas.³⁴

Carter Center observers reported that party agents were present in most polling stations visited, including agents from Jubilee, NASA and affiliated parties, and smaller parties. Agents signed the results form in most polling stations observed at counting. In most tallying centers, party agents were present and positively engaged. Domestic citizen observers were well-represented at polling stations and tallying centers. Observers noted slightly more than one-third of presiding officers in polling stations visited were female.

While the numerical results from the KIEMS system were transmitted successfully to the national tally center, the early transmission of these tallies often was not accompanied by scanned

copies of the polling-station results form (34A) for the presidential race, as required by law. Nor were the tally results displayed at the Bomas center clearly labeled “unofficial.” Presidential results were announced using constituency results forms 34B, which were not fully verified against the 34A forms. Both scanned 34As and the original 34As were slow in reaching Bomas, in some cases taking more than a week to arrive. At least several thousand forms were still outstanding one day before the deadline to lodge a petition challenging the presidential results. While the IEBC communicated with the opposition NASA coalition about their requests to make the scanned forms available, regular updates about the status of the tallying and tabulation process were not provided to the public.

³⁴ Teams in Saboti and Taita Taveta found the process lacked credibility because of significant disorder in the tally center and discrepancies between

results being announced by the constituency returning officer and those displayed at Bomas, respectively.

Despite the delays in receiving the 34A tally forms at the national level, the IEBC did not take advantage of the seven-day deadline provided by the law to announce results. Instead, the IEBC hastily declared presidential election results on Aug. 11, just three days after election day. The Kenya Elections Act requires the IEBC to publish the presidential election results forms on an online public portal. Out of 40,883 results forms, only 30,000, or three-fourths of the scanned 34A forms, were published on Aug. 9. The remaining 34As were only uploaded after the deadline for filing petitions on Aug. 25. Constituency results forms (34Bs) were posted only two days before the deadline for filing a petition to challenge the results of the presidential elections.³⁵

This breakdown in the results-transmission system critically undermined the transparency of the tallying process and severely hindered verification efforts by parties and independent observers, leading to legitimate questions about the accuracy of the results. The failure of the system to work as expected fueled NASA's challenge of the presidential election results as well as the court's ruling to annul the election.

After the presidential results were announced, NASA scrutinized the results forms and compared the 34As and 34Bs gathered from the IEBC with those of their party agents. It alleged significant irregularities in the results tally forms and said that the IEBC information technology system had been hacked and the results changed. NASA's claims were included in their petition challenging the results, which included a request to access the IEBC server to verify whether it had been infiltrated. The IEBC could have avoided some of these issues if it had used the time available to it before announcing the results to collect and post all the 34A forms, enabling all sides to compare them to the county-level 34B forms.

In an Aug. 17 statement, The Carter Center urged the Independent Electoral and Boundaries Commission to finalize the posting of the forms 34A as expeditiously as possible, noting the Aug. 18 deadline for filing challenges to the presidential election results, as access to official results data is critical for interested parties to cross-check and verify results. The Center expressed concern about the excessive use of force by the police and constraints on civil society organizations monitoring the electoral process.

Oct. 26 Election Day

Given the noncompetitive nature of the Oct. 26 election and the inability of observers to access NASA strongholds, The Carter Center deployed only a limited observation team for the Oct. 26 election. The Center's direct observations were limited to a small sample of polling stations and tally centers and did not attempt to provide a robust assessment of the quality of the process.³⁶ The IEBC postponed elections in four counties (25 constituencies) because of security reasons.

The Center observed tally centers in Nairobi, Kiambu, Eldoret, Bomet, Nyeri, and Mombasa and found that staff worked in an orderly fashion, with a clear operational flow and in accordance with the new procedures instituted as a result of the Supreme Court ruling. The process was well-organized and transparent, although in a few cases, the screen displaying the results was too far away for observers to read it easily or was not active at all.

Party agents and domestic observers were present for the Oct. 26 election but in substantially fewer numbers than in August. Observers noted the presence of Jubilee Party agents in more than 90 percent of the polling stations visited during polling and in all stations observed for counting.

35 The forms from the Aug. 8 election are no longer posted on the IEBC website.

36 The Carter Center observed voting in 79 polling stations in Nairobi, Kiambu, Nyeri, Mombasa, Bomet, Uasin, and Gishu counties. In the limited areas where Carter Center observers were deployed, they found that the overall environment was calm, that there were not any major irregularities in the voting process, and that turnout was significantly lower than for the Aug. 8 elections. The "supervisory form" to be filled out when voters were

recognized alphanumerically by KIEMS, rather than by their fingerprints, was not used consistently as required. The procedure is as follows: If KIEMS does not recognize a voter's fingerprints after three attempts, the clerk has to search for the voter alphanumerically. Once the voter is identified alphanumerically, the fingerprints are scanned again for verification, and a "supervisory form" (form 32A) has to be filled in and signed by a party agent. Polling staff followed closing and counting procedures, and counting was completed in an orderly manner.

Citizen observers were present in approximately 30 percent of the polling stations visited.³⁷ Jubilee agents and citizen observers were present in all tally centers. As a result of the NASA boycott, its agents were not present in the polling stations and tallying centers visited, which undermined a key safeguard on the election process.

Technological changes implemented by the IEBC in response to the court's ruling improved the overall administration of the fresh presidential election and increased transparency and efficiency of the electronic transmission of results. Scans of the 34A forms were received from the vast majority of the polling stations without undue delays. From those areas where voting took place, the IEBC received and displayed 37,187 of the 40,833 polling-station forms (34A) and 266 of the 290 constituency forms (34B) prior to the declaration of results on Oct. 30.³⁸

In the national tallying center at Bomas, electoral staff verified scanned forms multiple times against the originals brought by the constituency returning officers. While this exercise was time-consuming, it contributed to the transparency and reliability of the final results. In addition, throughout the tallying of results the IEBC provided agents and observers read-only access to the results transmission and the information and communication technology room in the national tally center.

The IEBC again released conflicting information about voter turnout at the national level during the tally process. Discrepancies in the turnout figures were caused by gaps between the number of voters identified by the KIEMS devices and the hard copy tallies, as voters who were identified alphanumerically through the complementary mechanism (form 32A) were not included

in the initial turnout figures. These discrepancies further underscore the need for a thorough review of the role of information and communication technology in the electoral process and its management.

Oct. 26 Election Results

The IEBC announced on Oct. 30 that President Kenyatta had been re-elected with 7,483,895 votes. The other six candidates on the ballot received less than 140,000 votes combined.³⁹ The IEBC announced the final turnout as 42.36 percent in the constituencies in which voting took place and 38.84 percent of all registered voters nationwide, a significant decline from previous elections.⁴⁰ Because Kenyatta won by a far greater margin than the total of approximately 1.6 million votes in the four counties in which the election was postponed, the IEBC declared Kenyatta the winner without results from those counties, as allowed under Article 55(b) of the Kenya Elections Act, and postponed indefinitely the elections in those areas.

Summary

Conditions during the Oct. 26 elections fell significantly short of international standards for a genuine election. With NASA's boycott, there was not a genuinely competitive election, and polling stations were not opened in significant parts of the country. In contrast to Aug. 8, the security of voters and IEBC staff was threatened. While the improved tally and transmission procedures contributed to a better-managed technical process on Oct. 26, these did not take place in all areas of the country.

37 Observers from the following groups were noted in polling stations observed: Office of the Registrar of the Political Parties, the Law Society of Kenya, the Kenya National Commission on Human Rights, the Catholic Justice and Peace Commission, Haki Africa, the Kenya Human Rights Commission, the National Cohesion and Integration Commission, and the Chartered Institute of Public Relations.

38 The IEBC received 27,124 forms within hours after polling and a total of 35,438 forms within nine hours after the closing of the polls.

39 According to the IEBC, the verified results from the 266 constituencies where the vote took place were: valid votes, 7,616,217; rejected ballots, 37,713; Kenyatta, 7,483,895 votes, or 98.27 percent; Odinga, 73,228 votes, or 0.96 percent; Aukot, 21,333, or .28 percent; Dida, 14,017, or .19 percent; Kaluyu, 8,261, or .11 percent; Wainaina, 6,007, or .08 percent; Nyagah, 5,554, or .07 percent; and Jirongo, 3,832, or .05 percent.

40 Turnout for the Aug. 8 election was reported by the IEBC as 77.48 percent.

Information and Communication Technologies

International standards require that the tallying and transmission of results be verifiable, transparent, and open.⁴¹

Technology in the 2017 Elections

Information and communication technologies played a major role in the Aug. 8 general elections and Oct. 26 fresh presidential election. Voter identification and results transmission relied heavily on the use of these technologies. However, paper versions of electoral registers and results reporting forms, such as the 34A and 34B forms, were also used.

Since 2016, the legal framework required Kenya to gradually introduce information and communication technologies into the voting process, with the goal of increasing the transparency of the election. In theory, technology should improve voter identification, prevent double voting, and facilitate fast and accurate results transmission and tabulation. In practice, however, the use of technology did not deliver the desired levels of transparency or efficiency. This was evidenced by the announcement of incompatible voter turnout numbers, unexplained differences between the official KIEMS report and the national overall election results reported in form 34C, and the failure to post all scanned results forms so that stakeholders could independently verify the results.

In its Nov. 7 preliminary statement, The Carter Center found Kenya's fresh presidential election was marked by insecurity, political uncertainty, and the lack of a fully competitive election. Polling did not take place in some parts of the country. Technological changes implemented by the Independent Electoral and Boundaries Commission improved the overall administration of the election and increased the transparency and efficiency of the electronic transmission of results in the areas of the country where polling took place. The election served to heighten the polarized political environment and deepened ethnic divisions in the country.

The information technology systems deployed by the IEBC in the Aug. 8 and Oct. 26 elections are complex, and their inner workings are very difficult to observe, even for computer security experts. Additional challenges to transparency and credibility were posed by the potential for technology software defects, the lack of nationwide network connectivity, and vulnerabilities to possible cyberattacks. Given the difficulty of such challenges, it is important to ensure that stakeholders have sufficient access to key information, at appropriate times, so that they can verify the accuracy of the election results and other important data.

41 U.N., ICCPR, Article 19(2); AU, Convention on Corruption, Article 9; CoE (Committee of Ministers), Recommendation (2004)11 on e-voting,

Article 98; CoE (Venice Commission), Code of Good Practice, Section 1.3.2.xiv

During the Aug. 8 elections, the IEBC relied heavily on the Kenya Integrated Elections Management System to identify voters and transmit polling-station results to the constituency and national levels. Poll workers identified voters using a biometric fingerprint scanner, with a printed electoral register as backup. Following the count, staff used the KIEMS system to transmit polling-station results and scans of the 34A results forms by SMS to the constituency and national tally centers. This process broke down however, as not all of Kenya's polling stations had internet connectivity, requiring polling staff to transport

tally forms (form 34B), prior to the receipt of all polling-station tally forms (form 34A).

For the Oct. 26 election, observers and political party agents were granted greater access to the operations of the technological tabulation system, which was verified against the paper evidence produced at polling stations and tallying centers (paper forms 34A and 34B). The process functioned more smoothly and adhered more closely to international standards than during the August polls. The successful verification of this evidence ultimately led to the increased transparency of the election process in those areas where the election took place.

Looking forward, it is essential that the results transmission process is more transparent and verifiable.

the KIEMS device to a different location to send the results. Additionally, the scans of some of the forms failed to send. While the voting materials and paper results forms were delivered physically to the constituency tally centers in which polling station-level results were tallied and consolidated, the IEBC staff at the Bomas national tally center did not cross-check the 34A scans against the 34B forms that were sent from the constituency tally centers. The voter turnout figures announced at Bomas inexplicably differed from those announced at the constituency tally level, and the IEBC posted only some of the forms on its website, which inhibited independent verification of the figures. Finally, the IEBC announced the presidential results based on the constituency-level

Summary

Overall, the IEBC has taken important steps to improve communication technology processes, although vulnerabilities remain.⁴² Looking forward, it is essential that the results transmission process is more transparent and verifiable. If a large technology component is retained in future elections, the results process should utilize two separate results systems, one that is purely electronic and another that is purely paper-based, which can be checked and compared at constituency and national tally centers. The system should be relatively simple to execute and understand, easy to maintain, less resource-intensive, more transparent, and more secure. In addition, providing for a postelection statistical audit to verify the digital election results against the original ballot box would reinforce the accuracy of the electoral results and bolster the transparency and accountability of the process.

⁴² See Kriegler Report at https://kenyastockholm.files.wordpress.com/2008/09/the_kriegler_report.pdf.

I Voter Education

Comprehensive voter education is essential to inform the electorate of its rights and to clarify election-related questions ahead of election day.⁴³ It promotes an inclusive electoral process and reinforces the international obligation to universal suffrage.⁴⁴ The right to voter education is contained in Kenya's Constitution and in the Kenya Elections Act.⁴⁵

The Independent Electoral and Boundaries Commission and Voter Education

The IEBC has a constitutional responsibility for voter education and should provide leadership in this regard. While the commission implemented voter education activities for the Aug. 8 and Oct. 26 elections, its outreach was initially limited by delays in delivering materials and resources to voter educators. Unfortunately, IEBC voter education materials on the procedure for voters to verify their registration information were distributed late in the process. While efforts intensified in advance of the Aug. 8 elections, voter education surrounding the fresh election in October was minimal.

The IEBC recruited 2,900 voter educators as well as 47 county and 290 constituency-based

educators to implement its voter education program. Voter educators were expected to cover large geographic areas but were not consistently provided with travel stipends to pay for their transportation costs. In addition, there were only two educators per ward, resulting in a limited voter outreach campaign.

The IEBC's voter education literature explained that citizens have the right to accurate and timely information to support informed participation in the electoral process. Materials were developed to address the needs of special-interest groups such as minorities, youth, people with disabilities, and other marginalized people.

In the weeks leading up to the Aug. 8 election day, Carter Center long-term observers reported a significant improvement in the timeliness of material delivery and in preparation and supervision of voter educators. Voting-day procedures were broadcast on the main TV channels. The IEBC placed informational ads in national newspapers, ran publicity spots on radio stations, and sponsored voting-day simulations in the majority of the counties.

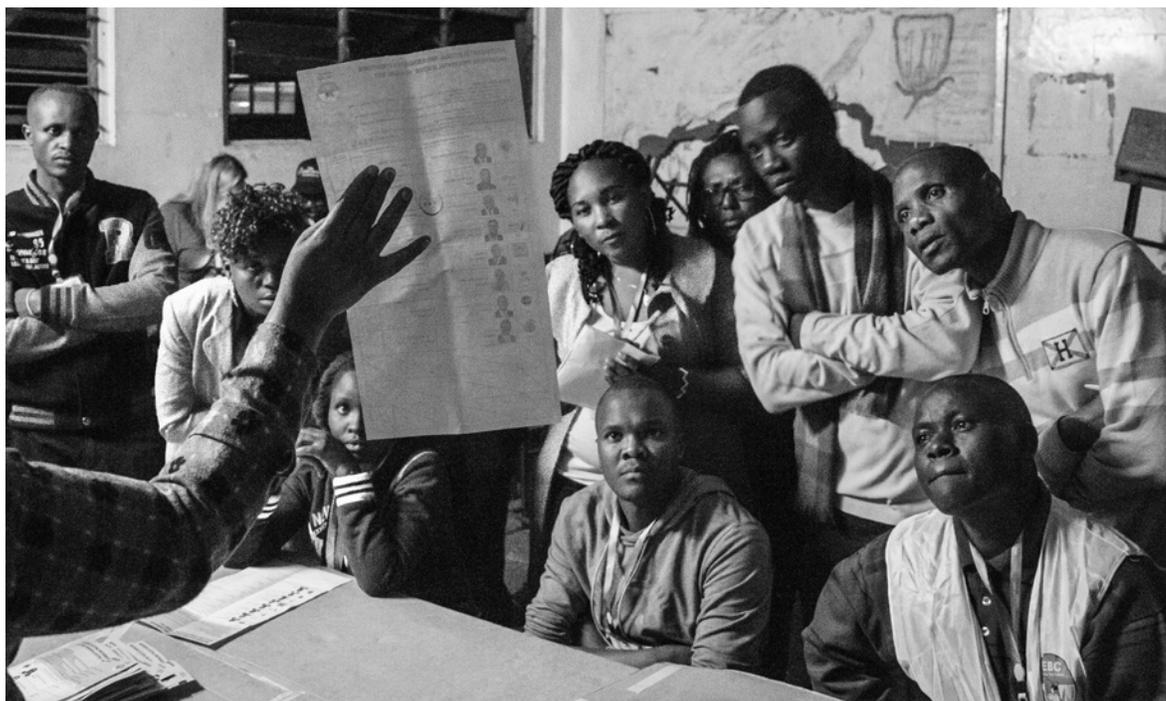
Although the IEBC redeployed voter educators for the Oct. 26 election, Carter Center observers reported lower levels of activity than in the run-up to the August elections.⁴⁶ Voter educators

43 The ICCPR General Comment 25 states that "[v]oter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community." See also AU, ACDEG, Article 12.

44 ICCPR Article 25: States must ensure that voter education reaches the broadest possible pool of voters. (United Nations Human Rights Committee, General Comment 25, para. 11)

45 Article 88.4(g) of the constitution, Section 40 of the Elections Act

46 The IEBC reported that for the October election, voters' main questions focused on whether elections would take place, and voter educators' messaging rested on reassuring them that elections would be held as scheduled.



Nathan Siegel

Tired party agents look on as each ballot is read during the late-night counting process. Carter Center observers reported that party agents were present in most polling stations visited, including agents from Jubilee, NASA and affiliated parties, and smaller parties.

reported that it was challenging to conduct their work in NASA strongholds because of a lack of receptiveness among voters.⁴⁷ During postelection interviews in western Kenya, interlocutors reported that voter educators feared being perceived as advocating for the Oct. 26 election. Such safety considerations hindered the already-limited education efforts.

Civil Society Organizations' Voter Education Efforts

Although the IEBC accredited some 200 organizations as voter education providers, some electoral stakeholders reported limited voter-education efforts from civil society organizations. This is likely the result of a lack of funding made available to them, which significantly impaired their capacity.

Summary

The IEBC had limited success in discharging its constitutional responsibility to carry out voter education. Standard voter education curriculum and training manuals were developed, including materials focused on youth and people with disabilities.⁴⁸ However, materials were distributed late, prompting voter educators to implement activities without any supporting documents to explain key information to voters.⁴⁹ While voter-education activities significantly improved in the period before election day in August, they were almost nonexistent before the Oct. 26 election. Overall, they were marked by a lack of sufficient personnel and funding. These problems also affected civil society organizations that conducted voter-education activities.

47 In Kajiado and Kiambu counties, for example

48 Materials were printed in English and Kiswahili only and were not printed in other languages prevailing in some areas of the country.

49 For voter verification education activities, voter educators were trained without the pertinent materials, resulting in their lack of clarity about how to use them.

I Voter Registration

Universal suffrage requires that the broadest possible pool of citizens can participate.⁵⁰ An inclusive and accessible voter registration process promotes universal suffrage.

Kenya's Voter Registration System

Under Kenyan law, every Kenyan citizen who is 18 years old and possesses an identification document qualifies to register as a voter.⁵¹ Citizens of unsound mind and those declared bankrupt are excluded, which is at odds with international standards on the right to vote.⁵²

Kenya has a manual civil registration system without a consolidated database, posing additional challenges to maintaining a reliable, accurate, and up-to-date voter register. The possibility of deceased voters being present in the register is increased when a voter register is not linked to a reliable civil register and automatically updated.

The IEBC conducts voter registration on an ongoing basis at its 290 constituency offices and occasionally at polling/registration centers around the country through voter registration exercises. The IEBC pursued its legal obligation to capture biometric data, alphanumeric data, and pictures of the applicants through use of the Kenya Integrated Electronic Management Systems devices.

Voter Registration 2017

The IEBC held two massive voter registration efforts in preparation for the 2017 elections in February 2016 and again from Jan. 16, 2017, to Feb. 19, 2017. These efforts brought the total number of registered voters to 19.6 million—a 36 percent increase over the 2013 register.

The IEBC also implemented a voter verification exercise that allowed voters an opportunity to confirm their registration status and the accuracy

Kenya has a manual civil registration system without a consolidated database, posing additional challenges to maintaining a reliable, accurate, and up-to-date voter register.

of their information. The IEBC conducted this process from May 11 to June 9, 2017, using 11,000 KIEMS devices to cover 40,883 polling stations. Turnout for the voter verification exercise was low. Approximately one-third of registered voters verified their information. The low turnout was attributed to voter apathy and a lack of sufficient voter education. In some areas, a mobile

50 AU, ACDEG, Article 4(2); OAS, ACHR, Article 23(1)(b); ICCPR, General Comment 25, paras. 4 and 11

51 As voter registration closes prior to election day, those who have turned of age on election day but have not been registered are effectively disenfranchised.

52 U.N., (CCPR) General Comment 25, para. 4: "Any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria (...) The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable."

registration caravan process was implemented in an effort to increase accessibility for voters. The IEBC developed a schedule to cover all polling stations; however, it was not followed consistently, and the IEBC failed to communicate consistently about when and where the voter registration staff and the KIEMS machines would be available. This led to some voters showing up on dates and at times when IEBC staff were not present. In other areas, verification clerks went door to door to verify voters in their areas of responsibility, which proved more effective.

Because of concerns about inaccuracies in the list, Kenya's biometric voter identification system provided a critical safeguard against malfeasance on election day by preventing multiple voting and guaranteeing that only eligible voters could cast a ballot.

Voter Audit

The Kenya Elections Act requires a full and independent audit of the voter register and requires the IEBC to follow up on recommendations within 30 days.⁵³ The IEBC contracted an international consulting firm, KPMG, to conduct the audit. Court challenges caused significant delays in the audit, constraining the IEBC's ability to implement all recommendations in advance of the election. Some political parties and civil society members criticized the process for its lack of transparency and public outreach. NASA and members of the public criticized KPMG for delays in delivering the audit report and the IEBC for failing to communicate the reasons for the delay and for not immediately releasing the audit to the public. NASA also criticized both for not disclosing the

methodology used in a timely fashion. The full report was released to the public on July 11, one month after its submission to the IEBC.

KPMG's audit identified more than 2.9 million inaccuracies in the register, primarily involving inconsistencies in names, gender, and dates of birth rather than information in the national identification and passport data. In addition, the audit found slightly more than 450,000 instances of either duplicate identification or passport data in the register or data for people on the register who were not found in the National Registration Bureau or Directorate of Immigration, respectively. According to KPMG, many of these discrepancies could have been caused by clerical errors when inputting data.

The IEBC addressed some findings from the audit and verification exercises when it finalized the official voter register, correcting some inaccuracies. The IEBC expunged a total of 88,602 deceased people from the register and deleted 93,548 duplicate entries. However, the IEBC retained registrants whose identification did not match data on the National Registration Bureau database (a total of 171,476) in order to minimize chances of disenfranchising legal voters. Despite these efforts, KPMG estimated that more than 1 million deceased voters remained on the voter register.

Because of concerns about inaccuracies in the list, Kenya's biometric voter identification system, KIEMS, provided a critical safeguard against malfeasance on election day by preventing multiple voting and guaranteeing that only eligible voters could cast a ballot.

According to the Kenya Elections Act, the IEBC should undertake voter registration and transfer requests up to 60 days before an election. However, the IEBC suspended both on March 7 because of the late start of the KPMG audit and the need to allow time to implement the recommendations from the audit before the Aug. 8 election.⁵⁴ This decision likely significantly

⁵³ Elections Act, 8A(6)

⁵⁴ Gazette notice 1813 of Feb. 27, 2017, Election (Registration of voters) Regulation 2012, sub-regulation 15. See

http://kenyalaw.org/kenya_gazette/gazette/volume/MTQ1Nw--/Vol.CXIX-No.26.

decreased the opportunity for interested people to register to vote or transfer to a preferred location for voting, thus disenfranchising some voters.

Despite repeated calls from political parties and a pending court case, the IEBC did not publish the voter register until July 22, decreasing the overall transparency of the process.⁵⁵ The High Court decided the case on Aug. 3, ordering the IEBC to publish a confirmation that the register of voters was open for inspection. Prior to this, the IEBC allowed voters to verify their individual data via an SMS platform.

Summary

The IEBC met many of its responsibilities to build an accurate and comprehensive voter register despite significant time constraints beyond its control. It implemented a number of steps within the limited time frame to register a significant number of new voters and to clean the voter register. Nonetheless, public confidence in the audit and the subsequent steps taken by the IEBC to update the register was diminished by a lack of transparency during the process and the IEBC's delay in releasing the full KPMG report. The delay in implementing the audit negatively

impacted the registration period and resulted in the disenfranchisement of some voters.

Biometric voter identification through KIEMS helped to stem concerns about a bloated register and provided a safeguard for the deficiencies that were not addressed before election day. However, the lack of sufficient KIEMS units during the verification exercise limited voters' ability to access the process. In future elections, the IEBC should implement KPMG's recommendations and issue regular public reports on its progress to increase public confidence in the accuracy of the voter register and to meet international standards.

The Independent Electoral and Boundaries Commission implemented steps to register a significant number of new voters and to clean the voter register. Nonetheless, public confidence was diminished by a lack of transparency and delay during the process.

⁵⁵ Elections Act, 6a (3)b. There are no regulations dictating a specific deadline for public posting of the official register.

I Candidate Nominations

Equitable treatment of candidates and parties during elections is important to protecting the integrity of democratic elections and the right of every citizen to be elected.⁵⁶ It is unreasonable to restrict the right to participate based on race, sex, religion, ethnic origin, language, and physical disability.⁵⁷ Kenya's Constitution and electoral law enshrine the right to be a candidate for public office, participate in the activities of a political party, and campaign for a political party or cause.

Kenyan Candidate Requirements

The requirements to run for public office in Kenya stipulate that parliamentary aspirants must be registered voters who satisfy the educational, moral, and ethical requirements listed in the constitution, the Leadership and Integrity Act, and the Elections Act. Candidates can be nominated by a political party or run as an independent. Candidates must have been citizens of Kenya for the past five years and be of sound mind. However, a person who has declared bankruptcy is ineligible.

In addition to these criteria, candidates for president must be Kenyan citizens from birth and hold a university degree. This educational requirement disproportionately disadvantages and restricts the rights of female, rural, and youth candidates, who may not have had equal access to educational

opportunities, and is at odds with international standards.⁵⁸ Further, Kenya's blanket restriction on individuals of unsound mind is contrary to Article 29 of the 2006 U.N. Convention on the Rights of Persons With Disabilities, which stipulates that there should be no restriction upon the political rights of such people, irrespective of the type of disability.⁵⁹

Political Party Primary Elections

Under the Kenya Elections Act, party candidates are required to demonstrate the support of party members who are registered voters, generally through party primary elections. Independent candidates must demonstrate the support of voters who are not affiliated with a party. Both party-backed and independent candidates found these requirements problematic and burdensome. Candidates had no way of verifying whether individuals signing their forms were registered voters or members of a party, as the voter register was not finalized before the deadline to submit signatures to the IEBC, and political parties did not maintain accurate membership lists to cross-check. As such, it emerged that some people who offered potential candidates their support did not fulfill the signatory requirements as a registered voter or did not have the appropriate political affiliation.

56 U.N., ICCPR, Article 25(b); AU, AfCHPR, Articles 2 and 13

57 U.N., ICCPR, Article 2

58 Para. 15 of the 1996 UNHRC General Comment 25 to the ICCPR states that "any restrictions on the right to stand for election ... must be justifiable on objective and reasonable criteria. People who are otherwise

eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence."

59 Article 29 of the 2006 CRPD requires states to "guarantee to people with disabilities political rights and the opportunity to enjoy them on an equal basis with others."

The political party primaries enjoyed high voter turnout and competition at all levels of government (governor, member of Parliament, senator, member of county assemblies, and women’s representatives). However, political parties’ lack of preparedness and poor management of the process greatly affected the credibility and integrity of the entire exercise, which was widely described by stakeholders as “shambolic.”

The primaries were plagued by a wide range of irregularities, including incidents of bribery; use of violence, intimidation, and harassment; destruction of voting material; chaotic counting processes; lack of accurate party lists to identify eligible voters; and targeted attacks against minority and marginalized groups, including women aspirants. Roughly one in five (18 percent) incumbents lost their primary race, leading to a significant increase in independent candidates for all offices, as many of the losing candidates filed to run as independents.⁶⁰ Multiple candidates made allegations of vote-rigging and fraud and lodged disputes with the Political Parties Dispute Tribunal.

Following the primaries, Carter Center long-term observers assessed the registration of nominated candidates at each level in their areas of operation. Most interlocutors reported that the IEBC was generally responsive to candidates and conducted the candidate registration process well. The IEBC cleared a total of 14,523 candidates for the Aug. 8 elections.⁶¹ The high number of candidates for all posts offered voters a genuine choice.

The IEBC set up an electronic candidate registration management system to verify the accuracy of candidate details by cross-matching the voter register and political party register. Candidates and parties complained that the system proved unreliable because of poor internet connections. When a stable internet connection was not available, staff used a manual procedure. Some aspirants’

records were not in the system, which slowed the nomination procedures. Inconsistencies in the application of procedures also were noted.⁶² The IEBC disqualified some candidates because of an insufficient number of qualified supporters, an incomplete application, or insufficient proof of educational degrees.

Candidate Integrity

The nominations process highlighted the uncertainty about the criteria for candidates to meet the requirements of Chapter 6 of the constitution on leadership and integrity as well as the ineffective enforcement of this provision. The Ethics and Anti-Corruption Commission is mandated to ensure enforcement of the leadership and integrity provisions and helps to vet candidates during the nomination process.⁶³ Various stakeholders raised questions during the nomination process about whether people charged with or convicted

Roughly one in five (18 percent) incumbents lost their primary race, leading to a significant increase in independent candidates for all offices.

of crimes, among other legal and fiduciary questions, could be barred from running for office. The commission compiled and forwarded to the IEBC a list of 106 aspirants whose integrity was under question for several reasons, including forged university diplomas and criminal convictions. The report questioned 11 candidates for governor, one for Senate, two for woman representative, 13 National Assembly candidates, and 14 county assembly candidates. Although, the report was submitted to the IEBC before the deadline for

60 Five governors out of a possible 47 lost; two out of 47 senators lost; 22 members of Parliament out of 290 lost; 10 out of 47 women reps lost; 300 members of county assemblies out of 1,450 lost.

61 Eight for the presidency, 210 for the 47 available governor’s seats, 256 for the 47 available Senate seats, 299 for 47 woman representative seats, 1,893 for 290 National Assembly seats, and 11,857 for the 1,450 county assembly seats.

62 Some returning officers would accept data on compact disc, while others would not (only flash drives); aspirants were normally given a sample of the ballot paper but in some locations, did not receive it (none

in locations observed in Nairobi, Machakos, and Kajiado counties). It was reported that in Nakuru and Kericho, the system failed to print in some cases. Some returning officers would update incomplete or missing profiles in the registration system; others would require the aspirant to come back at a later stage, as they stated they did not have the authority to update the system on the spot. In Nairobi and Nyeri, in some cases, the lists of supporting voters were barely verified.

63 A multiagency team was set up to vet candidates for these elections, comprised of the EACC, IEBC, Office of the Attorney General, Office of the Director of Public Prosecutions, and the Registrar of Political Parties.

candidate nominations, the IEBC cleared all candidates in question to run for office.

Summary

Reform of the candidate nomination process, including in the party primaries and the process of determining whether candidates meet the legal criteria, is needed to strengthen compliance

with international standards. The ability of the parties to conduct the primary process needs to be strengthened to ensure consistent application of the procedures to allow eligible party members only to vote in primaries. Current educational requirements for candidates disproportionately disadvantage women, youth, and rural aspirants. The standards and procedures for verifying candidate eligibility are unclear, including the role of the IEBC in determining whether candidates meet the leadership and integrity standards established in the constitution.

Current educational requirements for candidates disproportionately disadvantage women, youth, and rural aspirants.

I Campaign Environment

The maintenance of an open and secure campaign environment is important to protecting the integrity of democratic elections and the right of every citizen to be elected.⁶⁴ Candidates must enjoy the ability to campaign freely and share their platforms with supporters and prospective voters. Supporters and voters must have full opportunity to demonstrate support for candidates and learn candidate policy agendas and commitments as guaranteed by the constitution.

Overall Environment

The political environment in Kenya was highly polarized and divisive throughout the entire 2017 electoral period. Instances of violence occurred beginning with the political party primaries and continued through the Oct. 26 postelection period. The campaign for the Aug. 8 general election was highly competitive. In contrast, the Oct. 26 presidential election was boycotted by Raila Odinga, the NASA candidate. The political environment became more volatile and worsened significantly in the lead-up to the Oct. 26 election. Jubilee and NASA leaders became more entrenched in their positions, which exacerbated the deep divisions between communities within the country. Leaders attacked the IEBC and the judiciary. Protests became violent and led to loss of life and injury, including children, and precipitated the suspension of voting in four counties.⁶⁵

Campaign for Aug. 8 Elections

Voters had a wide choice of contestants for the majority of seats at all levels of government for the Aug. 8 elections, resulting in competitive elections in most areas of the country. The campaign for the Aug. 8 general elections took place from May 28 to Aug. 5. The leading presidential candidates held large rallies across the country, including areas outside their traditional strongholds.

Campaigning for lower-level races was subdued because of a lack of financial resources. Small parties and many independents campaigned door to door, at small gatherings, or with vehicle caravans. Candidates in down-ballot races joined the presidential and deputy presidential candidate rallies to increase their exposure. Although candidates campaigned without interference from the state, government vehicles were used to transport candidates to campaign events. In addition, Cabinet secretaries also used state resources for their campaigns. The government launched projects during the election period, which were promoted as government achievements. Cabinet secretaries were hosted in various media outlets, where they spoke of development works. Despite protests by the opposition, the IEBC stated that Cabinet secretaries were free to stump for the president, as they are exempted from the law barring civil servants from campaigning.

Carter Center long-term observers reported violations of some parts of the Electoral Code of

64 U.N., ICCPR, Article 25(b); AU, AfCHPR, Articles 2 and 13

65 "Preliminary Findings of the 26th October Repeat Election in Kenya," released by Kenya National Commission on Human Rights on Nov. 3. (<http://www.knchr.org/Newsroom/PressStatements.aspx>)



During the election season, it was common for political parties and candidates to campaign with posters and printed materials, particularly in Nairobi and urban areas across the country.

Conduct, including violent altercations between ruling and opposition supporters that were not addressed by any of the responsible institutions.⁶⁶ The IEBC did not investigate violations of the code of conduct proactively and instead appeared to consider potential violations only in response to complaints.

A distinctive feature of the 2017 general elections was the large number of independent candidates, numbering more than 4,600, compared to just 350 in 2013. This was a direct result of Kenya's chaotic primary process and the fact that nearly 20 percent of incumbents and party candidates failed to win their political party nominations. Prohibitions on "party hopping," or candidates switching parties after they lost their primary race, contributed to this dynamic. The large number of independents created challenges for parties and aspirants at all levels, as it was difficult for political leaders to support a party candidate running against a former party member contesting the same seat as an independent. The large number of independents contributed to hotly contested down-ballot races, which increased political tensions and caused greater insecurity at the local level.

⁶⁶ Other violations included harassment and intimidation of a female National Assembly candidate, destruction of campaign materials, and distribution of funds for attending a party rally.

⁶⁷ Some candidates who did not win their parties' official nomination won as independent candidates in their respective NASA or Jubilee strongholds,

Both Odinga and Kenyatta promoted so-called "six-piece" voting, encouraging their supporters to vote a straight party ticket across all six ballots and to support official party nominees to the detriment of independent candidates. Party supporters rejected this approach in some areas, as evidenced by the final results, suggesting that voters demonstrated greater interest in specific candidates and what they would do for their constituency.⁶⁷

The tone of political debate throughout the campaign period was polarizing, including at the highest level. Kenyatta and Odinga both pulled out of a much-touted presidential debate slated for July 10, accusing the organizers of failing to consult them. Kenyatta also did not participate in the July 24 televised debate, providing Odinga with a national platform in the final days of the campaign. The two candidates' unwillingness to issue a joint call for peace during the election period was a troubling sign for the postelection period. Indeed, the political leaders' intransigence foreshadowed the volatile and divisive political environment that emerged after the annulment of the Aug. 8 presidential election.

including John Paul Mwirigi (member of Parliament Igembe South-Meru); Kawira Mwangaza (women representative-Meru); Patrick Wainaina (member of Parliament Thika Town-Kiambu); Janet Sitiene (member of Parliament Turbo-Uasin Gishu); Peter Masara (member of Parliament Suna West-Migori); Mohammed Ali (MP Nyali- Mombasa).

Campaign for Oct. 26 Election

The campaign for the Oct. 26 fresh presidential election took place from Sept. 6 to Oct. 23. Carter Center long-term observers noted a significant drop in campaign activity, particularly in opposition strongholds. In those regions where campaigning took place, the Jubilee Party held large rallies, conducted car caravans, and purchased billboard ads. Divisive and confrontational tactics and increasing incidents of protests and violence marked the period. The negative rhetoric further polarized the nation and highlighted existing ethnic divides. Several politicians from both Jubilee and NASA were arrested on hate speech charges.⁶⁸

Verbal attacks on the courts and the election commission by senior party representatives and candidates increased in the lead-up to the Oct. 26 polls. Although President Kenyatta initially said that he accepted the Supreme Court's decision, he and other Jubilee officials attacked the court and the judges who voted in the majority to annul the election and threatened to make changes in the law to "reign in the court," while labeling the ruling a judicial coup. In a campaign speech on Sept. 2, President Kenyatta called the judges "crooks" and said that he would reform the judiciary when re-elected.⁶⁹

While Jubilee leaders aimed most of their attacks at the Supreme Court, NASA leaders directed their charges against the IEBC. Despite the finding by the court that there was no evidence of criminal liability on the part of the IEBC or its staff, NASA and its candidates attacked the IEBC's integrity and called for criminal prosecution of responsible staff and commissioners. At rallies, NASA attacked the IEBC and called for its reconstitution ahead of the Oct. 26 poll.⁷⁰

NASA called for countrywide peaceful demonstrations, initially dubbed "No reforms, no

elections" and later rephrased "No election on Oct. 26," unless NASA's irreducible minimum reforms were met. Hundreds of protesters took to the streets, blocking roads, setting tires on fire, and engaging the police in running street battles. Protests took place mainly in the slum areas of Nairobi and the NASA stronghold region of Nyanza, with limited and generally peaceful demonstrations in Mombasa and Machakos counties. In the Nyanza region and in Nairobi, protests turned violent after youth clashed with security forces. Security forces retaliated with the use of live ammunition and excessive force, resulting in at least six dead and scores injured.⁷¹

On Oct. 24, The Carter Center noted that the political and electoral context in Kenya was marked by increased insecurity, a lack of dialogue, and narrowing prospects for a credible presidential election on Oct. 26. The Center urged Kenya's key political leaders to use the limited time remaining before the polls to find a mutually acceptable way forward for the conduct of the fresh presidential election in a peaceful and secure environment. The Center called for attacks on IEBC officials to stop and for security forces to exercise restraint in an increasingly insecure electoral environment.

The violence in Nyanza region spread to attacks on IEBC training staff, which forced the IEBC to postpone or cancel poll worker training in some areas. This led to the arrest of politicians from the region and contributed to the postponement of elections in four counties.⁷² As the presidential election approached, the security situation deteriorated further, as many opposition politicians stated that they would not allow the election to

68 Gatundu South member of Parliament Moses Kuria (Jubilee), former Senator Johnstone Muthama (NASA), Embakasi East member of Parliament Paul Owino (NASA), and Ibrahim Omondi, member of county assembly of Airport Ward in Mombasa

69 The Swahili word used was *wakora*.

70 These minimums included the replacement and prosecution of IEBC staff whom they identified as responsible for the problems that led to the nullification of the Aug. 8 election as well as securing new companies to print the ballot and results forms and to design and oversee the electronic results transmission platform, among other demands. Some of the demands

could not be reasonably met during the time frame allotted. Others would have impinged upon the IEBC's independence.

71 Police Inspector General Boinet claimed that 19 people lost their lives before, during, and after the two elections in 2017 (<http://www.nation.co.ke/news/Police-refute-brutality-claims/1056-4166280-1535535/index.html>).

72 Kisumu Senator Fred Ota, and Ruth Odinga, former Kisumu deputy governor and member of county assembly for Kondole Ward (Kisumu), were arrested after they disrupted an IEBC training seminar on Tuesday, Oct. 17.

take place in their areas. Odinga encouraged his supporters to boycott the election.⁷³ A day before the election, Odinga, while addressing supporters, announced that NASA would transform itself from a political coalition into a national resistance movement that would engage in civil disobedience and boycott companies that profit from doing business with the government.⁷⁴

Violence Against Women and Children

The charged campaign environment, coupled with the violent protests and excessive use of force by security, further increased the vulnerability of special-interest groups, especially women and children. Following the Aug. 8 elections, there were reports of human rights violations, including beatings and killings by security forces as well as sexual violence against women and girls.⁷⁵ Multiple organizations and agencies joined an appeal to the inspector general of police and other government agencies charged with protecting the rights of women and girls to raise concerns about cases of sexual violence perpetrated in the electoral period and reportedly committed by police officers.⁷⁶

Throughout its long-term observation, Carter Center observers received reports of organized gangs and militia, primarily youth, being paid minimal fees by people linked to political parties to mobilize and instigate violence in both Jubilee and NASA strongholds. The Kenya National Commission for Human Rights noted increasing concern over the rise of politically instigated vigilante groupings that mounted attacks on

members of the public. Unemployed youth are especially vulnerable to engaging in such provocation.

Summary

Political parties, candidates, and voters have the right to participate in an election, including in the campaign period, in a safe and secure environment. They also have the right to choose not to participate. The 2017 electoral period played out in a volatile and unsafe environment. Campaigns became increasingly polarized and confrontational over the extended electoral period, and several instances of hate speech by candidates and supporters were reported.⁷⁷ Protests became violent and led to loss of life and destruction of property. Party supporters, IEBC officials, and community members, including members of marginalized groups, were vulnerable to intimidation and violence, in contravention of international standards that protect the security of the person. Verbal attacks by the head of state on the judiciary for exercising its constitutional duty to adjudicate election disputes undermined the independence of the judiciary and likely reduced the public's trust in it. Attacks on the IEBC, especially by NASA, served to further weaken public trust in its independence. The credibility of the Oct. 26 fresh election was severely undermined by the deteriorated political and security environment, and the process was undermined by the lack of a competitive race following Odinga's decision to boycott.

73 The following governors announced that no election would take place in their counties on Oct. 26: Wycliffe Oaranya-Kakamega County; Cornell Rasanga-Siaya County; Anyang' Nyong'o-Kisumu County; Okoth Obado-Migori County; Cyprian Awiti-Homa Bay County. <https://www.standardmedia.co.ke/m/article/2001257764/nyanza-governors-declare-ban-on-october-election>; https://www.the-star.co.ke/news/2017/10/20/no-election-will-be-held-in-kakamega-says-oparanya_c1655537

74 On Nov. 3, NASA called for boycotting of Safaricom, Bidco, and Brookside Dairies.

75 See Human Rights Watch (HRW_Kenya_Post-Election killings, Abuse) and Kenya National Commission on Human Rights. The killings included a

6-month-old girl in Kisumu. A 2-year-old girl was also wounded by a stray bullet. Female IEBC staff were assaulted by protesting youth and politicians, who interrupted their trainings in Kisumu.

76 <http://physiciansforhumanrights.org/library/phr-appeals-to-kenya-to-curb>

77 Both candidates and supporters engaged in hate speech. However, because candidates were required to sign a code of conduct, they were more closely monitored, which led to the arrest of several politicians on hate speech charges. Supporters spread hate speech mainly on social media.

Participation of Women, Youth, and People With Disabilities

International standards prohibit discrimination against women, youth, and people with disabilities as candidates, party members, and voters and mandate the use of special measures to ensure their equal representation.⁷⁸ The Kenyan Constitution has many provisions regarding the political participation of these special-interest groups. Kenya is also party to international treaties protecting their rights.⁷⁹ Despite the existence of these progressive provisions, advances in the participation of these groups, especially in the political sphere, have been very limited.

Women's Participation

The constitution stipulates that not more than two-thirds of the members of any appointive or elective body should be of the same gender. This provision has not been implemented by the National Assembly, and the quota was not met in the 2017 elections. Two Kenyan groups, the Center for Rights and Education and Awareness and the Community and Advocacy and Awareness Trust, filed a court case seeking an injunction to stop the newly elected Parliament from convening because it failed to meet the gender quota. The petition asked the court to force the Parliament to pass legislation to implement the gender quota during their first week. The High Court

denied the request for an injunction, leaving the constitutional requirement to meet the gender quota unmet.⁸⁰

Women aspirants and candidates faced a hostile political environment, including propaganda, smear campaigns, and violence. Many lacked sufficient finances to run for office. These challenges

Despite progressive provisions, advances in the participation of women, youth, and people with disabilities have been limited, especially in the political sphere.

led some to drop out of their races. Nonetheless, almost 50 percent of the 86 female incumbents ran for office again in the Aug. 8 election. Political parties encouraged women candidates to run in the political party primaries, with the understanding that they would be included in the party lists for member of county assembly, National Assembly, and the Senate if they lost. However, the parties did not honor their commitment. Many women candidates ran as independents, while others were unable to do so because of a lack of finances.

78 U.N. ICCPR, Articles 25 and 26; AU, AfCHPR, Article 2; U.N. CEDAW, Article 3; U.N. CRPD, Articles 4 and 5(4)

79 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979), International Covenant on Civil and Political Rights (ICCPR 1966), Convention on the Rights of Persons with Disabilities, ratified

in 2008, and the African Charter on the Rights of Women in Africa (Maputo Protocol) 2003

80 Court cases challenging the convening of the 12th Parliament were lodged by the Federation of Women Lawyers in Kenya, the Center for Rights and Education and Awareness, and the Community and Advocacy and Awareness Trust.

Some women who lost the primaries and believed they had credible evidence to dispute the election results were unable to challenge the results through the Political Parties Dispute Tribunal because of the prohibitive costs of the dispute process, including the need to travel to Nairobi to defend their case.

Nomination fees were lowered by half for women (and as well for youth and people with disabilities) to promote their participation. In addition, the IEBC directed that political party lists alternate female and male candidates (the “zebra” strategy) with the top nominee a woman.⁸¹ Although the parties followed this strategy, they were inconsistent in placing women as the top nominee. Only two parties—the Orange Democratic Movement and Ford–Kenya—fulfilled this requirement.⁸² While the number of women in office would have increased if the requirement had been enforced, the two-thirds gender balance would still not have been realized. Overall, women candidates numbered 1,300 out of a total of 14,523 candidates (9 percent) and only 172 (13 percent) were elected. Positively, three women governors



Soyia Ellison

A woman at a National Super Alliance rally in Nairobi displays her support for the party's flagbearer, Raila Odinga, while attending a rally at Uhuru Park. The National Super Alliance included the Orange Democratic Movement, the Wiper Democratic Movement, the Amani National Congress, and Ford–Kenya.

The “zebra” strategy directed that political party lists alternate female and male candidates, with the top nominee a woman. Only two parties fulfilled this requirement.

and three women senators were elected for the first time. In addition, political parties nominated 673 women through party lists to assume seats awarded through affirmative-action requirements.

There was no woman candidate in the Oct. 26 fresh presidential election. However, women were present in significant numbers as IEBC

poll officials, domestic observers, and political party agents.

Participation by Youth and People With Disabilities

Youth and people with disabilities faced similar barriers to participation in the political arena. The IEBC established a youth coordination committee on elections to provide advice on how the commission could help ensure meaningful youth engagement. To safeguard the special seats reserved for people with disabilities in Parliament and county assemblies, and on the recommendation of disabled people organizations, the IEBC agreed to

81 The Constitution of Kenya, Article 90(2)(b) provides that each party list should comprise the appropriate number of qualified candidates and alternate between male and female candidates (the zebra strategy).

82 While addressing women candidates on June 26, 2017, IEBC Chairman Chebukati warned political parties that the party list would be rejected

if the top nominee were not a woman (https://www.the-star.co.ke/news/2017/06/26/top-nominee-must-be-woman-or-party-list-will-be-rejected_c1585924). However, this was not enforced by the IEBC, as some of the lists published by the commission had a male as the top candidate.



Jubilee Party supporters pose for the camera at a rally in Uhuru Park in Nairobi prior to the first round of voting. The campaign environment prior to the first round was highly contentious. Voter turnout for the Aug. 8 polls was more than 77 percent.

verify that all people with disabilities nominated in party lists possessed a registration card from the National Council for Persons With Disabilities.

These efforts were helpful. A youth was elected governor for the first time.⁸³ Records from disabled people organizations indicate that 27 people with disabilities (out of 150 who participated) emerged as winners in the party primaries and competed in the various elective positions on Aug. 8. Of those, eight were elected to office. An additional 42 people with disabilities were nominated through the party lists to take seats.⁸⁴

Youth also made up a large number of IEBC polling officials.

Summary

Overall, marginalized groups made only minimal gains in the 2017 election. Political participation for women, youth, and people with disabilities fell far short of international standards and failed to meet Kenya's constitutional requirements, especially regarding the one-third gender quota for women's representation. Of particular concern, women and other special-interest groups are especially vulnerable to violence, with their security of person at great risk. Significant effort is needed, including by political parties, the IEBC, and other government structures, to increase political participation for these vulnerable groups, to ensure their safety, and to fulfill the progressive principles and the gender quota laid out in the constitution.

Electoral Dispute Resolution

⁸³ Stephen Sang, age 32, was elected governor of Nandi County. Article 55 of the Kenyan Constitution defines youth as those aged between 18 and 35.

⁸⁴ United Disabled Persons of Kenya (the umbrella body representing civil society organizations working on behalf of people with disabilities) and the

National Gender and Equality Commission filed a court case asking that party lists be nullified for not complying with constitutional requirements for nominations of people with disabilities. People with disabilities were not on the party lists in 17 counties, in contravention of the constitution.

Efficient electoral dispute mechanisms, including the provision of a fair and public hearing before a tribunal, are essential to ensure that effective

times, overlapping jurisdiction), and inconsistent deadlines.⁸⁷ While courts have prioritized election-related cases and resolved most of the disputes in a

remedies are available for the redress of violations of fundamental rights related to the electoral process.⁸⁵ Effective dispute-resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process.⁸⁶

In Kenya, electoral dispute resolution is primarily governed by the constitution, the Kenya Elections Act, the IEBC rules of procedures on settlement of disputes, and the Political Parties Act. The legal framework grants broad legal standing to all stakeholders to file electoral complaints. For the Aug. 8 election, multiple election-related disputes were filed, including a challenge to the presidential election results that ultimately led to the unprecedented annulment of the election. The Oct. 26 fresh election was also challenged in court.

Election Dispute Resolution Framework and Processes

The legislation on dispute resolution is complex, involves multiple resolution bodies (with, at

timely fashion, the lack of a single appeals process and short timelines for resolving pre-election disputes by the judiciary do not guarantee an effective and timely remedy, contrary to international and regional standards.⁸⁸

Many IEBC decisions on key parts of the electoral process were challenged in court, including the presidential results at the constituency level, ballot tendering, the procurement of KIEMS devices, the complementary mechanism for voter identification, and the results transmission system.

Pre-election disputes for the 2017 elections were generally related to party primaries and the nomination of candidates, electoral offenses, voter registration disputes, and violations of the Electoral Code of Conduct.⁸⁹ The IEBC, the Political Parties Dispute Tribunal, and the judiciary all have jurisdiction to consider election-related complaints. Petitions challenging the results can only be filed with courts.⁹⁰ The Supreme Court is the court of final instance in all cases.

The Political Parties Dispute Tribunal and IEBC entered into a memorandum of

85 ICCPR, Article 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."

86 U.N., UDHR, Article 21; AU, AfCHPR, Article 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."

87 While the polling-station diary provides for a complaint record form, the law does not establish any procedure for handling election-day complaints.

88 U.N., ICCPR, Article 2; AU, AfCHPR, Article 7; AU, ACDEG, Article 17(2)



An enthusiastic and massive crowd turned out for the final pre-election rally of the National Super Alliance in Uhuru Park in Nairobi.

understanding to delineate the jurisdiction of each body in order to avoid forum shopping for disputes related to party primary and nominations processes, which occurred in previous elections. The tribunal dealt with cases related to party primaries, while the IEBC handled those concerning candidate nominations. However, there was a lack of clarity regarding disputes related to nominations through party lists. IEBC instructions did not clearly resolve the matter.⁹¹

Primaries and the Political Parties Dispute Tribunal Decision

In 2016, Parliament amended the Political Parties Dispute Tribunal Act to increase membership of the Political Parties Dispute Tribunal from five members to seven following a recommendation by the Judiciary Committee on Elections and in anticipation of the heavy workload the tribunal would face during the party primaries. The tribunal considered and concluded a total of 300 appeals arising from party primaries.⁹² Many lawyers and candidates complained before the courts that the tribunal dismissed their cases without carefully considering the facts because of their workload and the strict

89 The 2016 Election Offences Act stipulates various electoral offenses, including offenses relating to the register of voters, maintenance of secrecy at elections, election-day offenses, malpractice by IEBC staff, personation, treating, bribery, and undue influence. Provisions of the act overlap with provisions of the penal code, the Public Order Act, and the National Cohesion and Integration Act.

90 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.

91 The IEBC handled internal party disputes, which should have been left to the Political Parties Dispute Tribunal, contrary to their agreement to refer litigants to the appropriate body. Some cases were simultaneously filed to both bodies, creating the possibility of conflicting decisions.



Nathan Stegel

Supporters of the Jubilee Party gather at a rally in Uhuru Park to support the re-election of President Uhuru Kenyatta. Local candidates often did not enjoy the same financial resources to sponsor campaign events and piggybacked on national-level candidates to reach a larger audience. The Jubilee and National Super Alliance presidential campaigns urged voters to vote a straight party ticket across all six ballots.

timelines imposed on the proceedings.

In many instances, the tribunal issued oral rulings without providing further detail, instructing litigants to return later for a reasoned judgment. Because of the compressed electoral calendar, the IEBC allocated 30 days for the resolution of disputes arising from the party primaries, a deadline that had to be extended several times. The tribunal had no legal obligation to conclude the cases within the timelines prescribed by the IEBC. According to the Political Parties Act, the tribunal has three months to conclude cases, with no shorter timelines specified for party primary cases, although these cases required a quick resolution in order to meet the deadline for candidate nominations.

The Independent Electoral and Boundaries Commission and Candidate Nomination Decisions

The IEBC Election Dispute Resolution Committee considered 250 disputes involving candidate nominations for the Aug. 8 election, mostly related to the IEBC's rejection of nomination papers submitted by candidates judged as not meeting eligibility requirements. The IEBC initially announced that it would hear disputes for 10 days starting June 5. However, two days later, the committee stated that all disputes had to be concluded by the end of that day, leaving more than 100 cases to be heard in less than 24 hours. Because of time constraints, parties were not given adequate time to present evidence, depriving them of a fair hearing or effective remedy.⁹³ The

92 Twenty disputes were related to county governor seats, 10 to members of the Senate, 96 to members of the National Assembly, five to county woman representatives of the National Assembly, and 159 to county assemblies. The highest number of cases were filed by the candidates of

Orange Democratic Movement, with 151 cases, and by the Jubilee Party, with 72 cases. One hundred Political Parties Dispute Tribunal decisions were appealed to the High Court. Of these, 10 were further appealed to the Court of Appeal and one to the Supreme Court.

committee issued judgments on cases at the time of the hearing, raising questions as to whether the committee had properly considered their merits. The committee dismissed the majority of the disputes as unsubstantiated.

Electoral Code of Conduct Enforcement Committee

The IEBC Electoral Code of Conduct Enforcement Committee resolved 69 cases concerning violations of the Code of Conduct during the Aug. 8 election period. These included instances of violence and intimidation, mostly involving clashes during rallies, as well as the defacing of campaign posters and the abuse of party symbols by independent candidates. Parties to the cases included candidates running for governor, woman representative, National Assembly, and member of county assembly.⁹⁴ The IEBC did not proactively investigate violations and, instead, only considered violations in response to complaints.

The law does not clearly regulate the enforcement committee's rules of procedures and, at times, the IEBC assumed jurisdiction over cases that should have been heard by other institutions.⁹⁵ This was underlined by a High Court ruling following the request for judicial review of the enforcement committee's decision to suspend campaigning in Migori County based on violations of the Electoral Code of Conduct. The court ruled that the committee took an arbitrary decision and overstepped its jurisdiction, acting as both a court and prosecutor. In addition, none of the decisions of the IEBC Dispute Resolution Committee or Code of Conduct Committee were made publicly available, undermining transparency in the dispute-resolution process.

The Office of the Director of Public Prosecutions is mandated to investigate all violations of the Election Offenses Act through magistrate courts within 12 months.⁹⁶ There were some 95 election-related criminal cases reported by the office, mostly related to destruction of electoral

The Independent Electoral and Boundaries Commission did not proactively investigate violations and, instead, only considered violations in response to complaints.

material, obstructing election officers, creating disturbances, vandalism, and violence. As of early 2018, five individuals had been convicted by courts for electoral offenses.

Summary

Overall, the courts dealt with pre-election disputes, including those involving the party primaries, candidate nominations, violations of the Electoral Code of Conduct, and criminal cases, in a professional manner and in line with international standards. However, there were a number of inconsistencies in the legal framework, including the lack of a single appeals process and short timelines for resolving pre-election disputes. In addition, the abbreviated manner in which the election commission at times handled complaints did not guarantee an effective and timely remedy on a consistent basis, contrary to international and regional standards.⁹⁷

93 Most cases were determined on the basis of information presented in writing at the filing of the complaint.

94 Two gubernatorial candidates, a member of the National Assembly, and a member of county assembly aspirant were issued fines for violence and intimidation. A one-week campaign ban for all contenders in Siaya County appeared to lack legal basis, as the Code of Conduct bans only those responsible for a violation from campaigning. The Marsabit governor campaign was suspended for the duration of the campaign period following the death of three people during a Jubilee rally.

95 The new Election Offenses Act adopted in 2016 contains a number of offenses that overlap with the Electoral Code of Conduct, the penal code, the National Cohesion and Integration Act, and the Public Order Act.

96 There are no clear deadlines to conclude the prosecution.

97 The Universal Declaration of Human Rights states, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." (Article 8), and "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (Article 10). The ICCPR, Article 2, states, "... any person whose rights or freedoms as herein recognized are violated shall have an effective remedy...." Article 14.1 of the ICCPR states, "... everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law."

Presidential Election Dispute Resolution

A petition against the results of the presidential election can be filed by any citizen of Kenya. The president-elect and the IEBC are automatically included as respondents to any petition against the results of presidential elections. Petitions must be submitted within seven days of the declaration of results and decided by the Supreme Court within 14 days after their filing.⁹⁸ Supreme Court decisions are final and not subject to appeal.

Stakeholders and independent analysts agree that Kenya's 14-day time frame for the court to conduct hearings and issue a decision on challenges to the presidential elections is too short. The time frame challenges the right to an effective remedy, as it does not allow for sufficient time for the court to scrutinize evidence or conduct a recount, if deemed necessary.

Sept. 1 Ruling on Aug. 8 Presidential Election

On Sept. 1, in an unexpected and precedent-setting ruling, the Supreme Court annulled the results of the presidential election held on Aug. 8, finding that the election was not held in compliance with the Kenyan Constitution and the electoral legal framework.⁹⁹ Specifically, the court found that the IEBC failed to organize the election in compliance with the constitutional requirement that all elections be “simple, secure, transparent, and verifiable.”¹⁰⁰

On Sept. 20, the court released its written decision detailing its reasoning for annulling the results. Despite the approximately 1.4 million vote margin separating the top two candidates, the court cited severe deficiencies in the IEBC's management of the election, specifically noncompliance with the electoral provisions governing the electronic results transmission system. According to the decision, the IEBC acted contrary to the law when it announced presidential results solely based on the constituency-level tally forms (form 34B), and prior to the receipt of all polling station tally forms (form 34A).

On Oct. 4, The Carter Center encouraged the Independent Electoral and Boundaries Commission to make the necessary changes based on the Supreme Court ruling annulling the results of the Aug. 8 presidential election to ensure compliance with the legal provisions related to result tallying and announcements. The Center further reiterated its call for transparency. Also the Center urged Kenya's political leaders to work with the IEBC to come to a consensus on the changes necessary to hold the Oct. 26 fresh presidential election. The Center called on all stakeholders to stop attacks on the judiciary and IEBC.

98 Constitution, Article 140.2

99 Chief Justice David Maraga, Deputy Chief Justice Philomena Mwili, Smokin Wanjala, and Isaac Lenaola gave the majority decision, while two judges, Jackton Ojwang' and Njoki Ndung'u, dissented.

100 Kenya Constitution, Article 81

Notably, the IEBC failed to transmit results electronically from all the polling stations to the national tallying center simultaneously with the tally forms, in violation of Section 39(1c) of the Elections Act. In addition, the court found that the IEBC had used results forms of questionable authenticity, in violation of the law. The court ruling also found that the failure of the IEBC to grant the petitioners sufficient access to the computer servers at the national tally center was a violation of the constitutional requirement that elections be conducted in a transparent manner.

The Supreme Court scrutinized the results tally forms that the IEBC had submitted for review and found several errors. For example, form 34C—the final national tally form for the presidential election—had neither a watermark nor a serial number, and the form appeared to be a photocopy. Fifty-six of the 291 constituency-level tally forms (form 34B) bore no watermark, five were not signed by the returning officer, 31 had no serial number, and 32 were not signed by the respective party agents. In addition, the hand-over section of 189 forms had not been filled in, and the take-over section of 287 forms had not been filled in.¹⁰¹

The IEBC's failure to comply with the court order to grant access to its computer servers, user log-in history, and the electronic results transmittal log also weighed in the court's decision. The court concluded that the failure of IEBC to provide this access ran contrary to the constitutional requirement of transparency and verifiability of the electoral process. According to the court, this meant that either the IEBC's information and communication technology system was infiltrated and compromised and the data therein interfered with—or IEBC officials themselves interfered with the data, or the IEBC simply refused to accept that it had bungled the transmission system and were unable themselves to verify the data fully.

Further, the court found that the IEBC failed to respond adequately to several allegations made by the petitioner, including claims that several results forms originated from polling stations that had not been published in the official gazette as

required by law. Nor could the IEBC explain why there were approximately 500,000 more votes in the presidential election than votes cast in gubernatorial or parliamentary elections, a fact that weighed heavily against the IEBC, according to the court.

The court declined to make a finding of criminality on the part of individuals within IEBC and instead stated only that there were “systemic institutional problems” but no clear evidence about which individuals were allegedly responsible for committing said illegalities and irregularities.

The Carter Center observed that Supreme Court proceedings were conducted in a professional and rigorous manner.

The Carter Center observed the entire process in the Supreme Court and found that the proceedings were conducted in a professional and rigorous manner, despite the very tight two-week time frame for conducting the hearing and deciding the case. All parties were given the opportunity to present and argue their case. Lawyers involved in the case praised the Supreme Court's dedication to their work. The proceedings were conducted in a transparent manner, with court judgments made public shortly after their pronouncement. However, both the court and the parties to the case found the constrained timeline problematic. In its ruling, the court noted that the constitution's 14-day deadline for court decisions on the presidential election, which had been discussed in Parliament but left unaltered, does not provide sufficient time for the court to order certain verification exercises, such as a recount of the votes or scrutiny of election materials. Such exercises might have clarified some questions about the accuracy of the results and/or otherwise affected the outcome of the petition.

The ruling party and other legal experts have criticized the court's decision for not taking into consideration the fact that no evidence

101 The Carter Center reviewed the forms from the constituencies to which Carter Center observers were deployed and found that none of the 34Bs in these constituencies had the take-over section signed. Sixteen

(43 percent) had the hand-over section signed. All forms were signed by the presiding officers and by party agents. Six (16 percent) forms did not have a watermark, and three (8 percent) did not have a serial number.

was introduced to demonstrate that the alleged irregularities were of sufficient magnitude to affect the results. While this principle is commonplace in international election law, at the time of the decision applicable Kenyan law did not require a finding that the alleged irregularities affect the results in order for the court to annul an election.¹⁰² Based on the evidence introduced and the failure of the IEBC to respond to legitimate concerns raised by the petition, the court was well within its bounds to annul the election results.

In its Nov. 20 statement, the Center urged stakeholders to respect the unanimous decision of the Supreme Court upholding the election results for the Oct. 26 election. In addition, it urged political leaders to engage in sustained political dialogue to promote healing in the postelection period. The extended electoral period was characterized by strident political rhetoric and harsh attacks by political leaders on Kenya's judiciary and IEBC, and election-related violence that resulted in numerous deaths, injuries, and damage to property. The Center found the protracted electoral process undermined the rule of law in Kenya and the country's democratic institutions.

After the Oct. 26 election, two petitions were filed questioning the constitutionality and legality of the fresh presidential election and one requesting sanctions against NASA.¹⁰³ The court consolidated the two petitions challenging the legality of the results and heard oral arguments from all interested parties in an open and transparent manner that afforded due process to all litigants. On Nov. 20, the court unanimously dismissed both petitions as being without

merit.¹⁰⁴ A reasoned opinion was partly read out on Dec. 11, within 21 days of the ruling, in line with the law. However, the full decision was not released publicly until Dec. 20. No explanation was offered for the delay.

The two consolidated petitions were narrowed down to eight issues for consideration, including legal standing of the petitioners, the consequences of withdrawal of one of the candidates from the election, the failure of the IEBC to conduct the election in conformity with the constitution and the law by, among other things, not calling for fresh candidate nominations, violating the principle of universal suffrage, and not holding the election in all 290 constituencies simultaneously as required by the constitution.¹⁰⁵ Petitioners also alleged that the IEBC lacked the independence, neutrality, and transparency mandated by the constitution.

Whether the law required the holding of fresh nominations was central to the petition. The court ruled that nominations carried out for the Aug. 8 election were valid and that there was no need for fresh nominations.¹⁰⁶ The court held that the IEBC was guided by the decision of the High Court in Eкуру Aukot's case, which recognized the right of Aukot and other previously registered presidential candidates to access the ballot for the Oct. 26 polls. The court additionally found that the withdrawal of Odinga, although legally binding, did not necessitate the cancellation of the Oct. 26 election and the calling of a new election with fresh nominations. The issue of withdrawal from a fresh presidential election is not addressed by the constitution or the Kenya Elections Act.¹⁰⁷

The petitioners argued that the election was not held in an environment conducive to the holding of free and fair elections, as high numbers

102 See Steve Brickerstaff's "International Principles of Vote Recounts and Election Contests," in "International Election Remedies," John Hardin Young (ed), 2016, American Bar Association, p. 200; and "Electoral Justice: The International IDEA Handbook," para. 546, p. 178.

103 These were filed by former Kilome member of Parliament Harun Mwau and two civil society activists, Njonjo Mue and Khelef Khalifa. A third petition was filed by the Institute for Democratic Governance, seeking a declaration that the NASA principals committed a number of electoral offenses arising from their irreducible minimums demands, boycott of the election, and calls for demonstrations, alleging that these actions denied many people the chance to vote.

104 NASA stated that the Supreme Court took the decision under duress and that it does not recognize the new government.

105 The Supreme Court held that one does not need to be a voter to challenge an election, as previously addressed by the Advisory Opinion 2 of 2012.

106 While Jirongo was declared bankrupt, the IEBC included him in the ballot, as his status was challenged in court.

107 The procedure for candidate withdrawal is stipulated in Regulation 52 of the Elections (General) Regulations of 2012 and requires the candidate to submit the letter of withdrawal within three days of the nomination deadline. However, nominations were not the basis of nullification of the Aug. 8 elections; therefore, it is not applicable in this case.

of voters were disenfranchised. They alleged that the low voter turnout was a manifestation of an electoral process that lacked credibility, as evidenced by various irregularities and illegalities. These included the appointment of returning officers declared invalid by a High Court decision, arbitrary relocation of numerous polling stations, discrepancies in the voter turnout in the polling station forms versus those transmitted by the Kenya Integrated Elections Management System, various errors in the results forms, and an unreliable voter register.

The court found that the petitioner's allegations of illegalities and irregularities were general in nature and effectively rebutted by the respondents. The court dismissed these allegations and stated that the petitioners did not provide sufficient evidence to meet their burden of proof that the alleged violations compromised the legitimacy and credibility of the fresh presidential election. The court attributed low voter turnout to the active call for boycott, the violent demonstrations, and voter fatigue.

While the petitioners argued that the IEBC failed to conduct elections in all constituencies contrary to the constitution, the court ruled that the violence that occurred in the opposition strongholds was instigated by the opposition and, therefore, could not serve as the basis for nullifying the fresh election. Moreover, according to the law, the IEBC has the legal right to announce nationwide results of elections when it is shown that the results in the 25 constituencies where the election was not held would not affect the overall result.¹⁰⁸

Further, the petitioners argued that the elections laws (amendments) bill, which came into force in November 2017, was intended to diminish the role of technology in elections, open election results to manipulation, and signal to voters that it would not be possible to challenge the results of the fresh presidential election successfully, even

if the same were to be unconstitutional, unlawful, or irregular. The court dismissed these allegations, holding that the Elections Act of 2011, not the 2017 amendments, was the law applicable to the Oct. 26 election. The court further stressed that the High Court has the jurisdiction to determine the constitutionality of the recent election amendment bill, which respondents argued was unconstitutional.¹⁰⁹

The court's decision overturning the results of the Aug. 8 presidential election was unexpected and precedent-setting.

Summary

In a politically charged atmosphere, which included threats targeting the judiciary, the Supreme Court provided a fair hearing for the petitions challenging the presidential election results for both the Aug. 8 and Oct. 26 elections, despite a short deadline that prevented the court from scrutinizing the evidence more thoroughly. It conducted hearings in a professional manner and in a public and inclusive environment. All parties were provided opportunity to present their cases. The court's decision overturning the results of the Aug. 8 presidential election was unexpected and precedent-setting. While the ruling was based on provisions in Kenya's laws that were at odds with common international principles requiring that an annulment of elections only be declared when the irregularities are shown to affect the outcome of the election, the court's ruling was based on Kenyan law. In addition, given the strong political pressure it faced, the court's decision reinforced the independence of the judiciary.

108 Section 55B of the Elections Act

109 On Dec. 13, the High Court suspended the Election Amendment Bill pending the delivery of a judgment scheduled for March 16, 2018.

I Civil Society and Citizen Observation

Citizen engagement in the electoral process supports an inclusive, transparent, and accountable election.¹¹⁰ Civil society organizations assess and report on the electoral process, conduct voter education campaigns, support the inclusion and safety of marginalized communities, and promote peace and reconciliation efforts.

Kenya's Civil Society Organizations and the 2017 Elections

Kenya has a vibrant civil society that participates in various aspects of elections. Civil society organizations were active during both the general elections and the fresh election. However, engagement was less visible for the Oct. 26 fresh election. Civil society organizations assessed and reported on the entire electoral process, providing recommendations for reforms. In addition, they informed voters of their rights and supported broad participation in the process.

For the Aug. 8 election, civil and faith-based organizations promoted peace efforts and collaborated to provide early warning systems for potential violence in identified hot spots. Civil society organizations also offered civic and voter education on the role of women, youth, and people with disabilities in the electoral process; the roles and responsibilities of elected officials; the importance of a peaceful and safe election environment; and the polling-day process.

Advocacy groups continued activities for the Oct. 26 election; however, Carter Center observers reported a significantly reduced presence of civil society organizations in the several weeks prior to the fresh presidential election. Though local and religious leaders continued to promote peace messaging in community and faith gatherings, the Center observed fewer organizations conducting voter education and peacebuilding programs. The insecure environment in some areas influenced deployment efforts, as evidenced by reports from the Elections Observation Group (ELOG) documenting attacks on its observers. Limited funding may have also affected deployment, as some organizations had not planned for a second round of polling.

Kura Yangu Sauti Yangu worked with the IEBC and other partners to organize the National Election Conference held in June, providing the public with updates on election planning. This coalition deployed observers for the Aug. 8 and Oct. 26 elections, releasing periodic reports.

The Elections Observation Group deployed 290 long-term observers to conduct a comprehensive observation of the entire election period, releasing periodic reports with recommendations.¹¹¹ For Aug. 8 election day, ELOG deployed 8,300 observers around the country, with 1,703 deployed to polling stations to conduct a parallel vote tabulation.¹¹²

¹¹⁰ AU, AfCHPR, Article 10(1)

¹¹¹ The Elections Observation Group is a coalition of civil society organizations working to support a credible electoral process.

¹¹² Parallel vote tabulation is an election observation methodology used for independent verification or challenging of election results.



Jubilee supporters wave flags emblazoned with the party's colors and logo ahead of the first round of the general election.

ELOG's estimates were "consistent with the IEBC's official results for the 2017 presidential election."¹¹³

For Oct. 26, ELOG deployed 2,196 observers in 215 of the 290 constituencies, releasing periodic reports of their findings. According to their report, ELOG was unable to deploy observers across the country because of the security situation in many areas. They were barred from polling stations in Kibra, Ruaraka, and Nyalı constituencies. Observers were attacked in Kilifi, Kibra, Ruaraka, and Nyalı constituencies. The group highlighted the deaths of more than 60 people and some 60 cases of sexual violence reported during the Oct. 26 electoral period as well as numerous injuries and destruction of property.¹¹⁴ ELOG found that the Oct. 26 election "considerably amplified the divisions in Kenya's society and body politic."

The Kenya National Commission on Human Rights maintained 139 monitors across the country for the entire electoral period to gather information about election-related human rights violations. They released periodic reports throughout the process. Among other concerns, they called on security forces to refrain from

excessive use of force, on the IEBC to ensure the safety of their poll workers, and on political parties to ensure their supporters protested lawfully and peacefully. The commission also called attention to the government's efforts to clamp down on civil society actors. In its preliminary statement released after the Oct. 26 polls, it called attention to the protests, excessive force by security agents, civilian loss of life, and attacks on security officials and IEBC staff.¹¹⁵ It also called on all political leaders to put "Kenya citizens and Kenya first" and to work to restore peace and unity in the country.

Restrictive Environment for Nongovernmental Organizations

In what some termed a government assault on civil society organizations that opposed the government and intended to file challenges to the results of the presidential election, on Aug. 14, the Civil Society Organization Coordination Board canceled the registration of two prominent Kenyan human rights organizations, the Kenya Human Rights Commission and AfriCOG.¹¹⁶ Following an outcry

113 <http://elog.or.ke/index.php/resource-centre/item/20-verification-statement-of-the-official-2017-presidential-results>

114 The figures in the Elections Observation Group statement were based on reporting by ELOG, other observers, KNHRC, Human Rights Watch, Amnesty International, and media.

115 <http://knchr.org/Newsroom/PressStatements.aspx>

116 The two are also members of Kura Yangu Sauti Yangu (KYSY).



Voters queue on election day to cast their ballots for governor, county-level assembly members, senators, member of Parliament, women's representatives, and president. Kenyans voted in record numbers during the 2017 general election, with 15,593,050 citizens casting a ballot for the presidential elections.

by local organizations and the international community, the acting interior Cabinet secretary halted the deregistration process to allow for further investigations into the allegations.

The coordination board summoned Muslims for Human Rights, Katiba Institute, and INUKA Kenya to appear before the board on Nov. 6, hours before the deadline for filing petitions against the results of the Oct. 26 election.¹¹⁷ The board alleged noncompliance with financial regulations and operating without proper registration. The organizations announced that they would not comply with the summons and alleged that the board was targeting them because they planned to file petitions challenging the results. Njonjo Mue, chairman of International Commission of Jurists-Kenya Chapter, and Khelef Khalifa, chairman of Muslims for Human Rights, filed a petition challenging the Oct. 26 re-election of President Kenyatta.¹¹⁸ The board banned the operations of KYSY and the organization We the People for allegedly operating illegal bank accounts and funding political party operations in the country.¹¹⁹

They were subsequently ordered to cease all political operations in Kenya.

Summary

Civil society organizations play an important role in assessing and safeguarding democratic elections in all countries, and Kenya is no exception. Kenyan civil organizations were effective in their efforts to promote awareness of the country's 2017 electoral process and voter engagement. Their reports provide a series of recommendations, which, if implemented, will serve to strengthen the electoral process. Their work is consistent with international standards for democratic elections and governance and should be strengthened, not hindered. It is commendable that the IEBC accredited 32,000 and 25,000 domestic observers for the Aug. 8 and Oct. 26 elections, respectively. However, the government action to limit or cease nongovernmental organization operations runs counter to international standards and is deeply troubling.

117 The three organizations are members of KYSY, a coalition of civil society organizations that joined efforts to proactively support Kenya's preparations for the 2017 elections.

118 International Commission of Jurists is a member of KYSY.

119 KYSY is an election campaign initiative formed by a coalition of civil society groups, while We the People is a citizen alliance that focuses on good governance. KYSY also was accused of operating without registration.

I Conclusion and Recommendations

The Carter Center respectfully offers the following recommendations in the hopes that they help inform the process of a national dialogue and electoral reforms as Kenyans confront the deep divisions exacerbated by the 2017 election process:

To the Parliament/Government

1. *Review the electoral legal framework.* A comprehensive review of the electoral legal framework, including for party primaries and electoral dispute resolution, should be conducted to address gaps and inconsistencies identified by stakeholders, civil society organizations, and the election commission during the 2017 election cycle. This consultative process should be inclusive and start immediately, well in advance of the next election cycle, to enhance legal certainty and avoid unnecessary future litigation. Overall, the law would benefit from consolidation into one comprehensive electoral code.
2. *Extend the deadline to resolve electoral challenges to presidential results.* Parliament should consider extending the deadline for the Supreme Court to resolve challenges to the results of a presidential election from the current 14 days to a minimum of 30 days. This would allow for a thorough consideration of all issues and sufficient time to implement a recount if the court deems it necessary.
3. *Amend the election law provisions regarding criteria for annulling elections.* Depending on the outcome of a pending court case regarding the late amendments passed in October by the ruling party, another amendment might be necessary to clarify that election results should only be annulled when irregularities are shown to be of sufficient magnitude to affect the outcome. While a provision along these lines was included in October's proposed amendment, it might be necessary to introduce such a provision as part of a new amendment following broad political consultation.
4. *Implement the legally mandated two-thirds gender rule.* Effective measures should be put into place to ensure full and timely compliance with the constitutionally mandated two-thirds gender rule. A consultative process that includes Parliament, relevant state institutions, political parties, and civil society organizations should be convened immediately to ensure that specific, actionable steps are identified and implemented to ensure rapid progress toward implementing the gender rule as soon as possible. This could include provisions to require that all upcoming by-elections be contested only by women candidates until the constitutionally mandated gender quota is met or to introduce sanctions against political parties that do not field female candidates.
5. *Streamline electoral timelines.* All electoral timelines, including those related to party primaries and submission of party lists to the Office of the Registrar of Political Parties, as well as voter registry audits and voter registration,

should be reviewed and amended to avoid the overlapping deadlines that impacted the 2017 primaries, delayed candidate nominations, and limited voter registration.

6. *Clarify and make more accessible party primary dispute processes.* The legal framework governing party primary dispute resolution should be reviewed, especially the time frames for resolving disputes and the resources available to the Political Parties Dispute Tribunal. Consideration should be given to decentralizing this process so that candidates outside Nairobi have a reasonable opportunity to be heard without undue financial burden.
7. *Clarify leadership and integrity requirements.* The criteria used to determine whether candidates meet the leadership and integrity requirements enshrined in the constitution should be clarified well in advance of future elections so that prospective candidates understand the requirements for running for office. In addition, the respective roles of the IEBC and the Ethics and Anti-Corruption Commission in determining whether a candidate has met the criteria and is eligible for public office should be clearly defined.
8. *Implement corrective measures to protect the rights of special-interest groups in elections.* A comprehensive review of compliance with the constitutional requirements to protect and promote the rights of vulnerable communities, or special-interest groups, during the electoral period should be conducted, with a view to identifying corrective measures for implementation prior to the next electoral cycle. Women, youth, people with disabilities, the elderly, members of minority groups, and other marginalized communities faced obstacles to participation in the process and were at risk of, and subject to, violence.
9. *Hold accountable security forces found culpable of misconduct.* The role of the security forces during the election should be reviewed. Allegations of excessive use of force or other misconduct should be investigated, with

those found culpable of criminal acts held accountable.

10. *Further strengthen capacity of civil society organizations to observe, assess, and report on elections.* Civil society organizations' capacity to observe and assess the electoral process should be strengthened, not limited. The legal framework should ensure that these organizations can observe and comment publicly on the entire election process without undue restrictions. They should remain vital watchdogs engaged in consultations about electoral reforms.

To the Independent Electoral and Boundaries Commission

11. *Implement independent electronic and paper-based results paths, with cross-checks.* To avoid the concerns raised during both the Aug. 8 and Oct. 26 elections regarding the transparency and accuracy of the tabulation process, the IEBC should implement two independent results paths, one electronic and another paper-based. At strategic points in the process, it is essential to enable stakeholders and independent observers to compare the intermediate results of the electronic results path with the paper-based results path, to provide increased transparency and accountability in the tabulation process.
12. *Implement all KPMG audit recommendations and conduct an audit of the voter register prior to the 2022 election.* Deficiencies in the voter register identified in the KPMG audit should be addressed, and all remaining recommendations should be implemented as required by the Kenya Electoral Act. An audit of the voter register should be conducted at least one year before the 2022 elections to allow sufficient time to correct any deficiencies that are identified and to allow sufficient time for voter registry verification.
13. *Strengthen public outreach capacity and transparency in decision making.* In order to enhance transparency for future elections, the IEBC should strengthen its public outreach capacity and provide prompt information on its

decision making. The commission should operate openly, hold public meetings, and publish and disseminate meeting minutes to inform the public of its decisions and votes. All key decisions, including dispute resolution, should be made public.

14. *Standardize training programs for staff/prioritize training in electoral calendar.* Training for IEBC staff should be standardized and conducted in sufficient time to allow for complementary training and capacity-building programs, as needed, to ensure full and common understanding of electoral regulations and procedures. Staff should be recruited earlier in the electoral calendar to allow time for a comprehensive training program.
15. *Strengthen and sufficiently fund voter education programs.* A review of the voter education program should be conducted to identify areas for improvement for the next election. Education efforts should start well in advance of the election and be consistent across the country. They should be well-funded. Materials should be available in local languages and promote inclusion of special-interest groups. Education about the role and responsibilities of county- and local-level elected officials, voter registration, and definitions of hate speech and related penalties, should be ongoing.

16. *Implement a postelection statistical audit for presidential results.* For the final verification of the digital election results, the IEBC should implement a postelection statistical audit to reinforce the accuracy of the electoral results and to bolster the transparency and accountability of the process.

To the Political Parties

17. *Pursue interparty dialogue at all levels of government.* Political party leaders should proactively pursue interparty dialogue from the national to local levels to begin to address the deep political divides that emerged throughout the 2017 electoral period.
18. *Implement a zero-tolerance policy for hate speech.* Political parties should implement a zero-tolerance policy for hate speech, intimidation, and violence and hold party members and supporters accountable for violating the policy.
19. *Strengthen participation of women and other special-interest groups in party decision making.* Political parties should strengthen internal processes and structures that promote the political participation of women, youth, people with disabilities, and other special-interest groups, including in party decision making and leadership positions.

Acknowledgments

The Carter Center wishes to thank the Independent Electoral and Boundaries Commission and the government of Kenya for inviting and facilitating the Center's international election observation mission to Kenya. The Center appreciates its interaction and engagement with local civil society organizations, political parties, media, and stakeholders at all levels.

The Carter Center thanks the U.S. Agency for International Development, whose support enabled the Center to deploy a robust and independent international observation mission.

The Center is grateful for the leadership of Her Excellency Dr. Aminata Touré, former prime minister of Senegal, and the Honorable John F. Kerry, former U.S. Secretary of State, who co-led the Aug. 8, 2017, observer delegation and remained engaged throughout the electoral process.

The Carter Center would also like to recognize the work of its core team of experts: Donald Bisson, field office director; Rachel Fowler, deputy field office director; Kseniya Dashutina, legal analyst; Fergus Anderson, security manager; Mario Orru, observer coordinator; and Pawel Jurczak, operations manager. The Center also thanks Scott Taylor, senior political adviser, for his input into the project. We also recognize the efforts of a team of highly skilled national staff in the Kenya field office: Victor Gichuru, security assistant; Magdalena Kieti, program coordinator;

Mary Kiiro, media assistant; Joash Moitui, political expert; Moses Muigai, accountant; Ken Ogutu, legal expert; and George Warui, logistician. The Center also thanks its team of qualified and professional drivers.

The Center recognizes its observers for their hard work and dedication to making the mission a success, in particular long-term observers Jespa Ajereboh, Agnes Alupo, Ben Dunant, Ahmed Farag, Andrei Krasnyansky, Andreu Solà-Martín, Anna Melikyan, Emile Messanh, Sonia Mickevicius, Bweenda (Junior) Muke, Kuldeep Niraula, Fatu Ogwuche, Mauda Rutaigatirwa, and Sandra Urquiza.

The Carter Center was also pleased to welcome U Aung Myint and U Myint Naing, two commissioners of the Union Election Commission of Myanmar, and Constance Chigwamba, chief elections officer of the Zimbabwean Electoral Commission, as short-term observers.

Additional thanks are owed to the Center's team in Atlanta that worked hard to prepare all aspects of this large mission, including Patti Bunker, David Carroll, Matt Cirillo, Travis Curtice, Soyia Ellison, Jane French, Sarah Giordano, Eamon Gragg, Tynesha Green, Dottie Hunt, Sarah Johnson, Erika Jurt, Ramiro Martinez, Karen McIntosh, Jayanthi Narain, Jennifer Phillips, Isaiah Sciford, Tara Shariff, Ben Spears, Craig Withers, and Lindy-Ann Wright.

Appendix B

Terms and Abbreviations

ELOG	Elections Observation Group
IEBC	Independent Electoral and Boundaries Commission
KIEMS	Kenya Integrated Elections Management System
NASA	National Super Alliance
ODM	Orange Democratic Movement

Letter of Invitation

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



REF. IEBC/ELC/14

20th April, 2017

The Carter Center Observer Mission
One Copenhill
453 Freedom Parkway
Atlanta, GA 30307
USA

RE: INVITATION TO OBSERVE THE 2017 GENERAL ELECTIONS

The Independent Electoral and Boundaries Commission (IEBC) is mandated by Article 88(4) (h) of the Constitution of Kenya, 2010 to facilitate observation, monitoring and evaluation of elections. Election observation is a critical process that enhances legitimacy of the election process.

It is on the basis of this that the Commission wishes to invite the Carter Centre Observer Mission to participate in and observe the 2017 General Elections activities in Kenya

Find enclosed information regarding your application process and other materials related to the observation processes.


EZRA CHILOBA
COMMISSION SECRETARY

Copy to: Principal Secretary
Ministry of Foreign Affairs & International Trade
NAIROBI

The Carter Center Delegation and Staff

Mission Leadership

John Kerry, United States,
Former Secretary of State

Aminata Touré, Senegal,
Former Prime Minister of Senegal

Atlanta Staff

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Technology Officer, The Carter Center

David Carroll, Director, Democracy Program

Matt Cirillo, Accounting Manager,
Grants and Contracts

Travis Curtice, Data Fellow, The Carter Center
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Soyia Ellison, Associate Director,
Communications

Jane French, Intern, Development

Sarah Giordano, Intern, Democracy Program

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Tynesha Green, Program Assistant,
Democracy Program

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Democracy Program

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Isaiah Sciford, Mission Assistant,
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Ben Spears, Program Associate,
Democracy Program

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Joash Moitui, Political Expert
Moses Muigai, Accountant
Kennedy Ogutu, Legal Expert
George Warui, Logistician

Long-Term Observers

Jespa Ajereboh, Cameroon
Agnes Alupo, Uganda
Benedict Dunant, United Kingdom
Ahmed Farag, Egypt
Andrei Krasnyansky, Belarus
Anna Melikyan, Armenia
Emile Messanh, Benin
Sonia Mickevicius, Canada
Bweenda (Junior) Muke, Democratic
Republic of the Congo
Kuldeep Niraula, Nepal
Fatu Ogwuche, Nigeria
Mauda Rutaigatirwa, Uganda
Andreu Solà-Martín, Spain
Sandra Urquiza, Peru

Short-Term Observers

John Achatz, United States
Soulaïma Aljabi, Syria
Halima Amadou, Niger
Perry Aritua, Uganda
Gabrielle Bardall, United States
Caroline Blair, Canada
Donald Booth, United States
Yolande Bouka, Canada
Johnda Boyce, United States
Elizabeth Bray, United States

Dayna Brown, United States
Martin Castro, United States
Constance Chigwamba, Zimbabwe
Bailey Childers, United States
Elias Chipimo, Zambia
Sam Coppersmith, United States
Gwendolyn Dillard, United States
Clemens Droessler, Austria
Alexander Dyzenhaus, Canada
Cyrille Ebotoko, Democratic
Republic of the Congo
Matthew Entenza, United States
Soraya Fersi, Tunisia
Marti Flacks, United States
Hilary Fyfe, Zambia
Gabriel Garang, South Sudan
Oscar Gasana, Canada
Nicolas Habarugira, Rwanda
Robin Hagemeyer, United States
Bacem Hbaieb, Tunisia
Marla Howard, United States
Fatu Jallah, Liberia
Pilate Johnson, Liberia
Theodore Kaze, Burundi
Gregory Kehailia, France
Sarah Khan, Canada
Tymon Kiepe, Netherlands
Heather Koga, Zimbabwe
James Lahai, Sierra Leone
Ndiaye Serigne Lahbib, Senegal
John Marondo, Zimbabwe
Suzanne Matale, Zambia
Christian Mulume, Democratic
Republic of the Congo
Ivan Mwaka, Uganda
U Aung Myint, Myanmar

U Myint Naing, Myanmar
Steven Nothern, United States
Oyelowe Oginni, Nigeria
Emmanuel Oluka, Uganda
Rim Othman, Tunisia
Rayede Ouedraogo, Burkina Faso
Felicite Owona, Cameroon
Victoria Perotti, Italy
Maria Piotrowska, Poland
Marcella Samba-Sesay, Sierra Leone

Oliver Semans, United States,
Rosebud Sioux Tribe
Kimberly Smiddy, United States
Minn Tent Bo, Myanmar
David Thorne, United States,
Former Ambassador to Italy
Hannah Waddilove, United Kingdom
Lesley Warner, United States
Elsa Watland, United States
Jacqueline Wilson, United States

Appendix E

Deployment Plan

Observer Deployment Plan for the Carter Center's International Election Mission in Kenya 2017

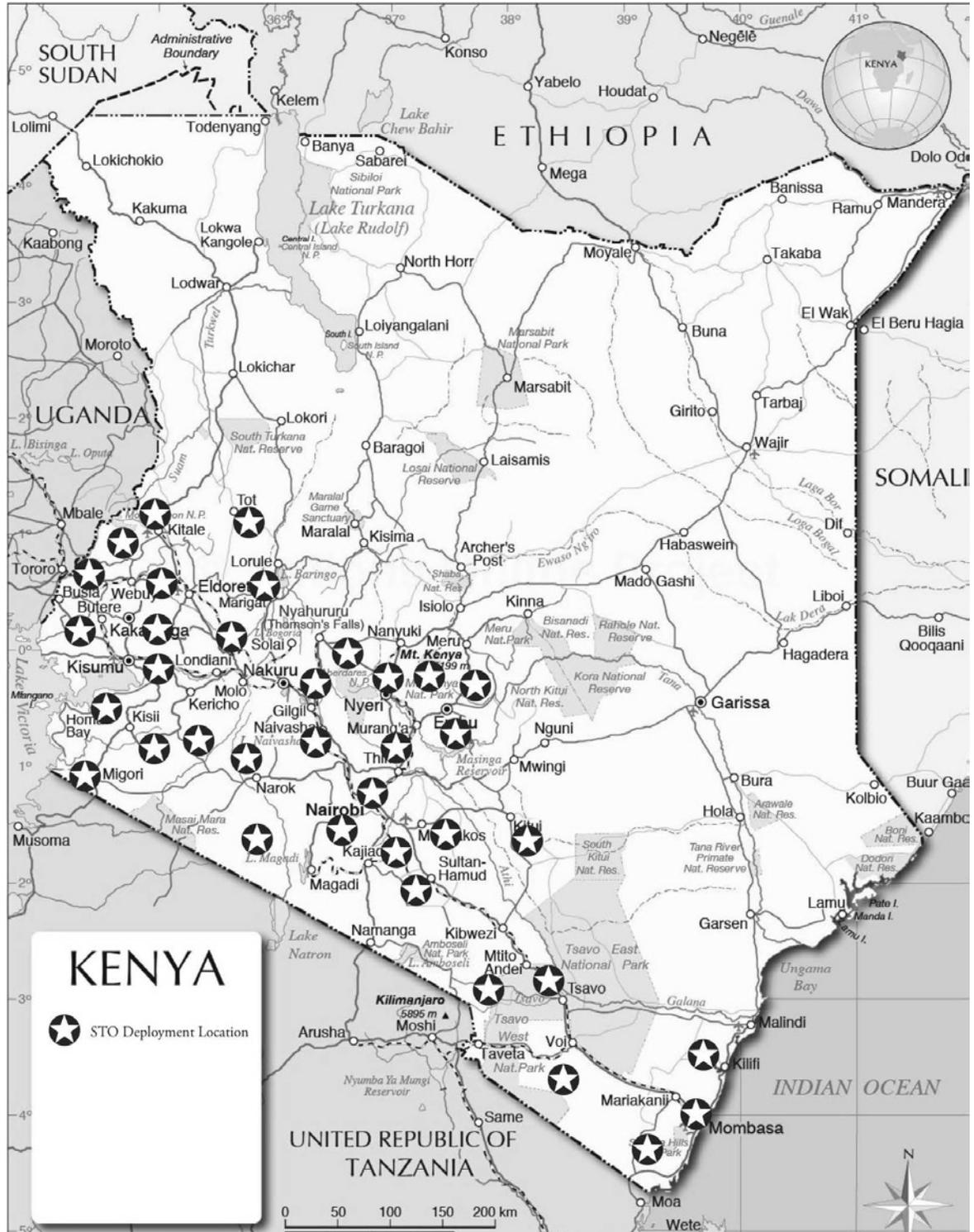
Observer Teams	Observers	Deployment Location
Long-Term Observers 1	Benedict Dunant	Nairobi
	Anna Melikyan	Nairobi
Short-Term Observers 1	Ivan Mwaka	Kitui
	Gwendolyn Dillard	Kitui
Short-Term Observers 2	Rayede Ouedraogo	Machakos
	Anna Melikyan	Machakos
Short-Term Observers 3	Elias Chipimo	Makueni
	Sarah Khan	Makueni
Short-Term Observers 4		Kiambu
		Kiambu
Short-Term Observers 5	Benedict Dunant	Kajiado
	Fatu Jallah	Kajiado
Short-Term Observers 6	Andreu Sola Martin	Nairobi
	Constance Chigwamba	Nairobi
Long-Term Observers 2	Agnes Alupo	Kisumu
	Andrei Krasnyansky	Kisumu
Short-Term Observers 7	Sam Coppersmith	Mbale
	Hilary Fyfe	Mbale
Short-Term Observers 8	Bacem Hbaieb	Siaya
	Gabrielle Bardell	Siaya
Short-Term Observers 9	Steven Nothern	Kisumu
	Agnes Alupo	Kisumu
Short-Term Observers 10	Andrei Krasnyansky	Homa Bay
	Marcella Samba-Sesay	Homa Bay
Short-Term Observers 11	Matthew Entenza	Migori
	Yolande Bouka	Migori
Short-Term Observers 12	Clemens Droessler	Kisii
	Soulaima Aljabi	Kisii
Short-Term Observers 13	Martin Castro	Nyamira
	Perry Aritula	Nyamira
Long-Term Observers 3	Sonia Mickevicius	Eldoret
	Jespa Tichock	Eldoret
Short-Term Observers 14	John Achatz	Kitale
	Suzanne Matala	Kitale
Short-Term Observers 15	Oscar Gasana	Kapsowar
	Halima Amadou	Kapsowar
Short-Term Observers 16	John Marondo	Eldoret
	Sonia Mickevicius	Eldoret
Short-Term Observers 17	Jespa Tichock	Kakamega
	Kimberly Smiddy	Kakamega

continues

Observer Deployment Plan for the Carter Center’s International Election Mission in Kenya 2017 (continued)

Observer Teams	Observers	Deployment Location
Short-Term Observers 18	Tymon Kiepe	Kapsabet
	Felicite Owona	Kapsabet
Short-Term Observers 19	Marti Flacks	Bungoma
	Victoria Perotti	Bungoma
Short-Term Observers 20	Emmanuel Oluka	Busia
	Soraya Fersi	Busia
Long-Term Observers 4	Sandra Urquiza	Nakuru
	Emile Codjo	Nakuru
Short-Term Observers 21	Emile Messanh	Nyahururu
	Johnda Boyce	Nyahururu
Short-Term Observers 22	Nicolas Habarugira	Nakuru
	Sandra Urquiza	Nakuru
Short-Term Observers 23	Gabriel Garang	Narok
	Marla Howard	Narok
Short-Term Observers 24	Cyrille Ebooko	Kericho
	Maria Piotrowska	Kericho
Short-Term Observers 25	James Lahai	Bomet
	Dayna Majorowita	Bomet
Long-Term Observers 5	Fatu Ogwuche	Nyeri
	Kuldeep Niraula	Nyeri
Short-Term Observers 26	Alexander Dyzenhaus	Meru
	Fatu Ogwuche	Meru
Short-Term Observers 27	Christian Mulume	Chuka
	Robin Hagemeyer	Chuka
Short-Term Observers 28	Pilate Johnson	Embu
	Caroline Blair	Embu
Short-Term Observers 29	Kuldeep Niraula	Nyeri
	Lesley Warner	Nyeri
Short-Term Observers 30	Ahmed Farag	Kerugoya
	Jacqueline Wilson	Kerugoya
Short-Term Observers 31	Oyewole Oginni	Muranga
	Rim Othman	Muranga
Short-Term Observers 32	Donald Booth	Nanyuki
	Heather Koga	Nanyuki
Long-Term Observers 6	Bweenda Muke	Mombasa
	Mauda Kamoga Rutaigatirwa	Mombasa
Short-Term Observers 33	Oliver Semans	Mombasa
	Mauda Kamoga Rutaigatirwa	Mombasa
Short-Term Observers 34	Theodore Kaze	Kwale
	Elizabeth Bray	Kwale
Short-Term Observers 35	Bweenda Muke	Kilifi
	Baily Childers	Kilifi
Short-Term Observers 36	Elsa Watland	Voi
	Hannah Waddilove	Voi

Short-Term Observers Deployment Locations



Appendix F

Checklists

Pre-election Questionnaire Kenya 2017



User/Team	
Observation Time	
1. Was the polling station staff present?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not observed
2. Were ALL sensitive materials present?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #2 is equal to "No"	
3. If not, what was missing?	
4. Was the results transmission system tested?	Select Multiple: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not observed
ANSWER ONLY IF Question #4 does not include "No"	
5. How did it go?	Select One: <input type="checkbox"/> Fully <input type="checkbox"/> Adequately <input type="checkbox"/> Inadequately <input type="checkbox"/> Not at all <input type="checkbox"/> Not observed
6. Did you observe any other issues?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #6 is equal to "Yes"	
7. If "yes," please describe.	

User/Team	
Observation Time	
1. Geographic Area: <i>Area of Responsibility</i>	Select One: <input type="checkbox"/> Central <input type="checkbox"/> Coast <input type="checkbox"/> Eastern <input type="checkbox"/> Nairobi <input type="checkbox"/> North Eastern <input type="checkbox"/> Nyanza <input type="checkbox"/> Rift Valley <input type="checkbox"/> Western
2. Polling Center Name:	
3. Constituency:	
4. Constituency:	
5. Ward: <i>Provide Ward, if known.</i>	
6. Is the center in an urban or rural area?	Select One: <input type="checkbox"/> Urban <input type="checkbox"/> Rural
8. Number of stations at the center: <i>If the center and the station are the same, please answer "1."</i>	
9. Were there obstacles or barriers on the way to the center that could have inhibited general access?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #9 is equal to "Yes"	
10. If 'yes', describe: <i>Describe the barriers to public access and to what extent it affected voter franchise. Examples of barriers might include distance from villages or a dysfunctional bridge.</i>	
11. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the center? <i>If there is only one station per "center," then please answer this question as "OUTSIDE the station." Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Vote-buying <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None
ANSWER ONLY IF Question #8 is greater than 1	
12. Which, if any, of the following prohibited or disruptive circumstances did you observe INSIDE the center (but outside the stations)? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Prohibited campaign material <input type="checkbox"/> Unauthorized persons <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Vote-buying <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
13. Start of Observation (station) (please use 24 hour clock): <i>For example: 3:00 pm should be 15:00 hrs.</i>	
ANSWER ONLY IF Question #8 is greater than 1	
14. Polling Station Number:	
15. Does the station appear to be accessible to physically challenged persons, including the elderly? <i>The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.</i>	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #15 is equal to "No"	
16. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
17. Did the polling station open during your observation?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #17 is equal to "No"	

18. If 'no', please describe:

Why did the polling station fail to open on time?

ANSWER ONLY IF Question #17 is equal to "Yes"

19. At what time did the polling station open?

20. If the polling station opened MORE THAN [30] MINUTES late, what are the reasons for delay?

If the polling station opened less than 30 (can be edited) minutes late, check not applicable

Select Multiple:

- Missing materials Absent polling staff Unrest
 Other Not applicable

ANSWER ONLY IF Question #20 includes "Other"

21. If 'other', please describe:

22. If present, please indicate the presiding officer's gender:

If the presiding officer is not present now but comes back before your departure, please adjust this answer.

Select One:

- Female Male

23. Number of staff working at the polling station:

24. Number of FEMALE staff present (excluding presiding officer):

25. Number of registered voters:

26. Which, if any, prohibited or disruptive circumstances did you observe in the station?

Select "NA" if you did not observe any prohibited or disruptive circumstances.

Select Multiple:

- Prohibited campaigning Prohibited campaign material
 Unauthorized persons Ineffective queue management
 Vote-buying Intimidation Violence
 Significant disorder Security (beyond regulations)
 Other None Not applicable

ANSWER ONLY IF Question #26 does not include "None"

27. If any issues, please describe:

What were the prohibited/disruptive circumstances and how did they affect the process?

28. Was the KIEMS kit being used successfully?

Select One:

- Yes No

ANSWER ONLY IF Question #28 is equal to "No"

29. If 'no,' why was the KIEMS not used?

ANSWER ONLY IF Question #28 is equal to "No"

30. If 'no,' when did the KIEMS kit stop working?

Consider asking the presiding officer.

ANSWER ONLY IF Question #28 is equal to "No"

31. If the KIEMS kit was not used, how was the complementary mechanism followed?

Select One:

- Fully Adequately Inadequately Not at all
 Not observed

32. Were any of the following materials missing, insufficient, or incorrect?

Select Multiple:

- Indelible ink Booths/screens Ballot papers
 Ballot box(es) Voter list(s)/FVR Marking materials
 Stamps Light source Forms Pens
 KIEMS kits Batteries Seals PS diary
 Other Not applicable

ANSWER ONLY IF Question #32 includes "Other"

33. If 'other', please describe:

34. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear

Select One:

- I have read and understand the definitions.

to affect the integrity or transparency of the process. *INADEQUATELY* - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). *NOT AT ALL* - The procedure was omitted or was not followed meaningfully. *NOT OBSERVED* - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.

35. Did the ballot boxes have the following characteristics?
Select all that apply.

Select Multiple:
 Fairly transparent Color coded
 Labeled with the elective post

36. How closely did BALLOT INVENTORY procedures adhere to regulations?

Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #36 is equal to "Inadequately"
 37. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #36 is equal to "Not at all"
 38. Please describe the reasons for not choosing Fully or Adequately:

39. How closely did EMPTY BALLOT BOX DEMONSTRATION adhere to regulations?

Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #39 is equal to "Inadequately"
 40. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #39 is equal to "Not at all"
 41. Please describe the reasons for not choosing Fully or Adequately:

42. How closely did BALLOT BOX SEALING procedures adhere to regulations?

Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #42 is equal to "Inadequately"
 43. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #42 is equal to "Not at all"
 44. Please describe the reasons for not choosing Fully or Adequately:

45. How closely did ROOM CONFIGURATION adhere to the suggested format?

Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #45 is equal to "Inadequately"
 46. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #45 is equal to "Not at all"
 47. Please describe the reasons for not choosing Fully or Adequately:

48. Which parties/candidates were represented by agents?

Select Multiple:
 Jubilee male agents Jubilee female agents
 NASA male agents NASA female agents
 Other male agents Other female agents

ANSWER ONLY IF Question #48 includes "Other female agents"
 49. If 'other,' which party/parties?
 Leave blank if unknown.

ANSWER ONLY IF Question #48 includes "Other female agents"
 50. If 'other,' which party/parties?
 Leave blank if unknown.

51. Which election observation groups were present?

Select Multiple:
 International males International females
 ELOG males ELOG females KHRC males
 KHRC females Other males Other females

ANSWER ONLY IF Question #51 includes "Other males"

52. If 'other,' which EOM?

Leave blank if unknown.

ANSWER ONLY IF Question #51 includes "Other females"

53. If 'other,' which EOM?

Leave blank if unknown.

54. Which, if any, of the following groups did not have sufficient access to the process?

- Select Multiple:**
- Candidate/Party agents International observers
 Citizen observers Polling staff Media Other
 Not applicable

ANSWER ONLY IF Question #54 does not include "Not applicable"

55. If any, please describe:

How were groups denied access and what was the impact?

56. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)?

- Select Multiple:**
- Candidate/Party agents International observers
 Citizen observers Polling staff Media Voters
 Security Local officials Other Not applicable

Select 'NA' if no interference was observed.

ANSWER ONLY IF Question #56 does not include "Not applicable"

57. If any interference, please describe:

How were groups causing interference and what was the impact?

58. Did the security officers behave appropriately?

- Select One:**
- Yes No Not observed

ANSWER ONLY IF Question #58 is equal to "No"

59. If 'no,' please describe:

60. Were there any officially lodged complaints?

If applicable, near the end of your observation, ask the Presiding Officer if present or ask observers from other organizations or party/candidate agents.

- Select One:**
- Yes No

ANSWER ONLY IF Question #60 is equal to "Yes"

61. If 'yes,' please describe:

Who filed complaints? What were the reasons? How were they addressed?

62. Were there any problems reported to you by those present rather than those observed directly by you?
(e.g., agents, observers, voters)

- Select One:**
- Yes No

ANSWER ONLY IF Question #62 is equal to "Yes"

63. If 'yes,' please describe:

Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.

64. How would you evaluate party/candidate agents' performance?

- Select One:**
- Adequate Inadequate Not observed/observable

ANSWER ONLY IF Question #64 is equal to "Inadequate"

65. Please describe the reasons for not choosing Adequate:

66. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.
VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. POOR - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity

- Select One:**
- I have read and understand the definitions.

of the process. *NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.*

67. What is your team's evaluation of the implementation of procedures by staff at this station?

This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.

Select One: Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #67 is equal to "Poor"

68. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #67 is equal to "Not Credible"

69. What were the main reasons for not choosing Very Good or Reasonable?

70. Before moving ahead, please review the following definitions regarding the overall assessment of the OPENING ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

VERY GOOD - No significant problems were observed with the implementation of procedures or environment. The process was fully transparent. REASONABLE - Observed problems did not affect significantly the integrity or transparency of the opening process, but there is room for improvement. POOR - Significant problems with any of the following may have compromised the integrity of the process: Errors in implementing opening procedures; Polling staff subject to intimidation or interference; Observers restricted. NOT CREDIBLE - Observed problems with the opening likely compromised the integrity of the process.

Select One: I have read and understand the definitions.

71. What is your team's overall assessment of the election environment and process at this station?

Select One: Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #71 is equal to "Poor"

72. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #71 is equal to "Not Credible"

73. What were the main reasons for not choosing Very Good or Reasonable?

74. End of Observation (Station):

75. Any other comments?

User/Team	
Observation Time	
1. Geographic Area: <i>Area of Responsibility</i>	Select One: <input type="checkbox"/> Central <input type="checkbox"/> Coast <input type="checkbox"/> Eastern <input type="checkbox"/> Nairobi <input type="checkbox"/> North Eastern <input type="checkbox"/> Nyanza <input type="checkbox"/> Rift Valley <input type="checkbox"/> Western
2. Polling Center Name:	
3. Constituency:	
4. Constituency:	
5. Ward: <i>Provide Ward, if known.</i>	
6. Is the center in an urban or rural area?	Select One: <input type="checkbox"/> Urban <input type="checkbox"/> Rural
8. Start of Observation (station) (please use 24 hour clock): <i>For example: 3:00 pm should be 15:00 hrs.</i>	
9. Number of stations at the center: <i>If the center and the station are the same, please answer "1."</i>	
10. Were there obstacles or barriers on the way to the center that could have inhibited general access?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #10 is equal to "Yes"	
11. If 'yes', describe: <i>Describe the barriers to public access and to what extent it affected voter franchise. Examples of barriers might include distance from villages or a dysfunctional bridge.</i>	
12. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the center? <i>If there is only one station per "center," then please answer this question as "OUTSIDE the station." Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Vote-buying <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None
ANSWER ONLY IF Question #9 is greater than 1	
13. Which, if any, of the following prohibited or disruptive circumstances did you observe INSIDE the center (but outside the stations)? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Prohibited campaign material <input type="checkbox"/> Unauthorized persons <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Vote-buying <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
14. Does the station appear to be accessible to physically challenged persons, including the elderly? <i>The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.</i>	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #14 is equal to "No"	
15. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:	
ANSWER ONLY IF Question #9 is greater than 1	
16. Polling Station Number:	
17. If present, please indicate the presiding officer's gender: <i>If the presiding officer appears before departure, please adjust this answer.</i>	Select One: <input type="checkbox"/> Female <input type="checkbox"/> Male

18. Number of staff working at the polling station:

19. Number of FEMALE staff present (excluding presiding officer):

20. Number of registered voters:

21. Approximate number of voters who have voted by time of arrival:
If the number of voters is not directly recorded by the polling staff, it may be necessary to ask the presiding officer or other staff to estimate the number of voters or calculate by other means.

22. Which, if any, prohibited or disruptive circumstances did you observe in the station?
Select "NA" if you did not observe any prohibited or disruptive circumstances.

Select Multiple:

Prohibited campaigning Prohibited campaign material
 Unauthorized persons Ineffective queue management
 Vote-buying Intimidation Violence
 Significant disorder Security (beyond regulations)
 Other None Not applicable

ANSWER ONLY IF Question #22 does not include "None"

23. If any issues, please describe:
What were the prohibited/disruptive circumstances and how did they affect the process?

24. Were any of the following materials missing, insufficient, or incorrect?

Select Multiple:

Indelible ink Booths/screens Ballot papers
 Ballot box(es) Voter list(s)/FVR Marking materials
 Stamps Light source Forms Pens
 KIEMS kits Batteries Seals PS diary
 Other Not applicable

ANSWER ONLY IF Question #24 includes "Other"

25. If 'other', please describe:

26. Was the KIEMS kit being used successfully?

Select One:

Yes No

ANSWER ONLY IF Question #26 is equal to "No"

27. If 'no,' why was the KIEMS not used?

ANSWER ONLY IF Question #26 is equal to "No"

28. If 'no,' when did the KIEMS kit stop working?
Consider asking the presiding officer.

29. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.
FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. INADEQUATELY - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). NOT AT ALL - The procedure was omitted or was not followed meaningfully. NOT OBSERVED - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.

Select One:

I have read and understand the definitions.

ANSWER ONLY IF Question #26 is equal to "No"

30. If the KIEMS kit was not used, how was the complementary mechanism followed?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

31. How closely did CHECKING FOR INK procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #31 is equal to "Inadequately"

32. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #31 is equal to "Not at all"

33. Please describe the reasons for not choosing Fully or Adequately: _____

34. How closely did VOTER IDENTIFICATION procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #34 is equal to "Inadequately"

35. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #34 is equal to "Not at all"

36. Please describe the reasons for not choosing Fully or Adequately: _____

37. How closely did READING OUT OF VOTER NAME procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #37 is equal to "Inadequately"

38. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #37 is equal to "Not at all"

39. Please describe the reasons for not choosing Fully or Adequately: _____

40. Please describe the reasons for not choosing Fully or Adequately: _____

41. Please describe the reasons for not choosing Fully or Adequately: _____

42. How closely did BALLOT ISSUING procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #42 is equal to "Inadequately"

43. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #42 is equal to "Not at all"

44. Please describe the reasons for not choosing Fully or Adequately: _____

45. How closely did VOTER INSTRUCTION procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #45 is equal to "Inadequately"

46. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #45 is equal to "Not at all"

47. Please describe the reasons for not choosing Fully or Adequately: _____

48. How closely did BALLOT STAMPING procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #48 is equal to "Inadequately"

49. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #48 is equal to "Not at all"

50. Please describe the reasons for not choosing Fully or Adequately: _____

51. How closely did INKING FINGERS procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #51 is equal to "Inadequately"

52. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #51 is equal to "Not at all"

53. Please describe the reasons for not choosing Fully or Adequately: _____

54. How closely did BALLOT CASTING procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #54 is equal to "Inadequately"

55. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #54 is equal to "Not at all"

56. Please describe the reasons for not choosing Fully or Adequately:

57. How closely did ASSISTED VOTING procedures adhere to regulations?

Select One:

- Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #57 is equal to "Inadequately"

58. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #57 is equal to "Not at all"

59. Please describe the reasons for not choosing Fully or Adequately:

60. Did you observe any of the following?

Select Multiple:

- Crossing names off FVR Voters signing their names
 None of the above

61. Which, if any, of the following ineligible voters were allowed to vote?

Select Multiple:

- Persons not on list - unauthorized
 Persons with unauthorized ID Persons without ID
 Voters with spoiled ballots Voters already crossed off list
 Voters already inked Underage persons
 Voters by proxy (e.g. relatives)
 Voters improperly assisted Other Not applicable

ANSWER ONLY IF Question #61 does not include "Not applicable"

62. Please describe, including any 'others' noted

63. Which, if any, of the following eligible voters were NOT allowed to vote?

Select Multiple:

- Persons on FVR with ID Person on KIEMS
 Polling staff EMB members Citizen observers
 Party/candidate agents Security personnel - authorized
 Journalists - national Other Not applicable

ANSWER ONLY IF Question #63 does not include "Not applicable"

64. Please describe, including any 'others' noted:

65. Are ballot boxes correctly sealed?

All seals should be correctly applied and ballot boxes should be secure from tampering.

Select One:

- Yes No

ANSWER ONLY IF Question #65 is equal to "No"

66. For the ballot boxes, describe if 'no'

67. Are additional polling materials secured from potential theft or misuse?

Additional materials should be stored compactly and out of the way of traffic in the polling station. Disorganized or poorly stored materials are vulnerable to tampering.

Select One:

- Yes No

ANSWER ONLY IF Question #67 is equal to "No"

68. For the additional polling materials, describe if 'no' storing materials

69. Does the polling station layout follow the suggested format?

Select One:

- Yes No

ANSWER ONLY IF Question #69 is equal to "No"

70. For the polling station layout and suggestions, describe if 'no' polling layout regs

71. Does the polling station layout effectively facilitate the flow of voters?

The layout should allow voters to move through the process without skipping steps or crossing paths with other parts of the queue.

Select One:

- Yes No

ANSWER ONLY IF Question #71 is equal to "No"

72. For the polling station layout and the flow of voters, describe if 'no'

73. Are voters able to cast their ballots in secret?

Secrecy of the ballot should not be undermined or violated because of crowding or exposed booths.

Select One:

Yes No

ANSWER ONLY IF Question #73 is equal to "No"

74. For casting ballots in secret, describe if 'no'

75. Was the number of staff working in the polling station sufficient for a timely and orderly process?

(OPTIONAL) A hint may include indicators of disorder or delay when caused by an insufficient number of polling staff.

Select One:

Yes No Not observed

ANSWER ONLY IF Question #75 is equal to "No"

76. For the number of staff, 'if 'no' describe

77. How long did a typical voter have to wait in the queue before entering the polling station?

If there is no queue, enter 0, otherwise, ask the second or third voter in line how long they have waited so far to inform your estimate. Provide your answer in minutes. For example, if a voter waited 1.5 hours, enter 90 (minutes).

78. How long did it take a typical voter to complete the voting process once they entered the polling station?

The voting process begins when the voter enters the polling station and ends when the voter has cast his or her ballot and is able to leave the polling station. Watch two or three voters carry out the voting process, and provide an estimate in minutes of how long the process took.

79. Which, if any, of the following irregular processes did you observe? **Select Multiple:**

Multiple voting Ballot stuffing
 Interruption of voting Voter intimidation
 Illicit assistance Family voting
 Possible vote buying/selling
 Violation of secrecy of the ballot Other
 Not applicable

ANSWER ONLY IF Question #79 does not include "Not applicable"

80. If any irregularities, please describe:

Please comment on the frequency and severity of the irregularities, noting the extent of their impact on the voting process.

81. Which parties/candidates were represented by agents?

Select Multiple:

Jubilee male agents Jubilee female agents
 NASA male agents NASA female agents
 Other male agents Other female agents

ANSWER ONLY IF Question #81 includes "Other male agents"

82. If 'other,' which party/parties?

Leave blank if unknown.

ANSWER ONLY IF Question #81 includes "Other female agents"

83. If 'other,' which party/parties?

Leave blank if unknown.

84. Which election observation groups were present?

Select Multiple:

International males International females
 ELOG males ELOG females KHRC males
 KHRC females Other males Other females

ANSWER ONLY IF Question #84 includes "Other males"

85. If 'other,' which EOM?

Leave blank if unknown.

ANSWER ONLY IF Question #84 includes "Other females"

86. If 'other,' which EOM?

Leave blank if unknown.

87. Which, if any, of the following groups did not have sufficient access to the process?

- Select Multiple:**
- Candidate/Party agents International observers
 Citizen observers Polling staff Media Other
 Not applicable

ANSWER ONLY IF Question #87 does not include "Not applicable"

88. If any, please describe:

How were groups denied access and what was the impact?

89. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)?

- Select Multiple:**
- Candidate/Party agents International observers
 Citizen observers Polling staff Media Voters
 Security Local officials Other Not applicable

Select 'NA' if no interference was observed.

ANSWER ONLY IF Question #89 does not include "Not applicable"

90. If any interference, please describe:

How were groups causing interference and what was the impact?

91. Did the security officers behave appropriately?

- Select One:**
- Yes No Not observed

ANSWER ONLY IF Question #91 is equal to "No"

92. If 'no,' please describe:

93. Were there any officially lodged complaints?

If applicable, near the end of your observation, ask the Presiding Officer if present or ask observers from other organizations or party/candidate agents.

- Select One:**
- Yes No

ANSWER ONLY IF Question #93 is equal to "Yes"

94. If 'yes,' please describe:

Who filed complaints? What were the reasons? How were they addressed?

95. Were there any problems reported to you by those present rather than those observed directly by you?

- Select One:**
- Yes No

(e.g., agents, observers, voters)

ANSWER ONLY IF Question #95 is equal to "Yes"

96. If 'yes,' please describe:

Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.

97. How would you evaluate voters' understanding of voting procedures?

- Select One:**
- Adequate Inadequate Not observed/observable

ANSWER ONLY IF Question #97 is equal to "Inadequate"

98. Please describe the reasons for not choosing Adequate:

99. How would you evaluate party/candidate agents' performance?

- Select One:**
- Adequate Inadequate Not observed/observable

ANSWER ONLY IF Question #99 is equal to "Inadequate"

100. Please describe the reasons for not choosing Adequate:

101. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

VERY GOOD - Procedures were always or almost always applied correctly.

Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. REASONABLE - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process POOR - Procedures were

- Select One:**
- I have read and understand the definitions.

not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. **NOT CREDIBLE** - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.

102. What is your team's evaluation of the implementation of procedures by staff at this station?

This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #102 is equal to "Poor"

103. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #102 is equal to "Not Credible"

104. What were the main reasons for not choosing Very Good or Reasonable?

105. Before moving ahead, please review the following definitions regarding the overall assessment of the ELECTION ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

VERY GOOD - The environment and process fully allowed voters to exercise freely their right to vote. The process was fully transparent. REASONABLE - The environment and process were acceptable in ensuring that voters could freely exercise their right to vote. Any observed problems did not affect significantly the integrity or transparency of the process. POOR - For some voters, the environment or process was not conducive to the free exercise of the right to vote, equality, or transparency. Observed problems may have compromised the integrity of the process. NOT CREDIBLE - The environment or the process prevented voters from freely exercising their right to vote or affected the fairness of polling. Observed problems likely compromised the integrity of the polling process.

Select One:

I have read and understand the definitions.

106. What is your team's overall assessment of the election environment and process at this station?

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #106 is equal to "Poor"

107. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #106 is equal to "Not Credible"

108. What were the main reasons for not choosing Very Good or Reasonable?

109. End of Observation (Station):

110. Any other comments?

User/Team	
Observation Time	
1. Geographic Area: <i>Area of Responsibility</i>	Select One: <input type="checkbox"/> Central <input type="checkbox"/> Coast <input type="checkbox"/> Eastern <input type="checkbox"/> Nairobi <input type="checkbox"/> North Eastern <input type="checkbox"/> Nyanza <input type="checkbox"/> Rift Valley <input type="checkbox"/> Western
2. Polling Center Name:	
3. Constituency:	
4. Constituency:	
5. Ward: <i>Provide Ward, if known.</i>	
6. Is the center in an urban or rural area?	Select One: <input type="checkbox"/> Urban <input type="checkbox"/> Rural
8. Number of stations at the center: <i>If the center and the station are the same, please answer "1."</i>	
9. Were there obstacles or barriers on the way to the center that could have inhibited general access?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #9 is equal to "Yes"	
10. If 'yes', describe: <i>Describe the barriers to public access and to what extent it affected voter franchise. Examples of barriers might include distance from villages or a dysfunctional bridge.</i>	
11. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the center? <i>If there is only one station per "center," then please answer this question as "OUTSIDE the station." Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Vote-buying <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None
ANSWER ONLY IF Question #8 is greater than 1	
12. Which, if any, of the following prohibited or disruptive circumstances did you observe INSIDE the center (but outside the stations)? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Prohibited campaign material <input type="checkbox"/> Unauthorized persons <input type="checkbox"/> Ineffective queue management <input type="checkbox"/> Vote-buying <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
13. Start of Observation (station) (please use 24 hour clock): <i>For example: 3:00 pm should be 15:00 hrs.</i>	
ANSWER ONLY IF Question #8 is greater than 1	
14. Polling Station Number:	
15. If present, please indicate the presiding officer's gender: <i>If the presiding officer appears before departure, please adjust this answer.</i>	Select One: <input type="checkbox"/> Female <input type="checkbox"/> Male
16. Number of staff working at the polling station:	
17. Number of FEMALE staff present (excluding presiding officer):	
18. Number of registered voters:	
19. Approximate number of voters who have voted by time of arrival: <i>If the number of voters is not directly recorded by the polling staff, it may be necessary to ask the presiding officer or other staff to estimate the number of voters or calculate by other means.</i>	
20. Which, if any, prohibited or disruptive circumstances did you observe in the station?	Select Multiple: <input type="checkbox"/> Prohibited campaigning <input type="checkbox"/> Prohibited campaign material

Select "NA" if you did not observe any prohibited or disruptive circumstances.

- Unauthorized persons Ineffective queue management
 Vote-buying Intimidation Violence
 Significant disorder Security (beyond regulations)
 Other None Not applicable

ANSWER ONLY IF Question #20 does not include "None"

21. If any issues, please describe:

What were the prohibited/disruptive circumstances and how did they affect the process?

22. Were any of the following materials missing, insufficient, or incorrect?

Select Multiple:

- Indelible ink Booths/screens Ballot papers
 Ballot box(es) Voter list(s)/FVR Marking materials
 Stamps Light source Forms Pens
 KIEMS kits Batteries Seals PS diary
 Other Not applicable

ANSWER ONLY IF Question #22 includes "Other"

23. If 'other', please describe:

24. Did you observe the official closing of the polling station?

Generally, a polling station is closed when announced by the presiding officer.

Select One:

- Yes No

ANSWER ONLY IF Question #24 is equal to "No"

25. If 'no', please describe:

26. At what time was the closing of the polling station announced?

The closing time should match the time in regulations unless an emergency change was made by the EMB.

27. Approximately how many voters were waiting in the queue at the time of closing?

Select One:

- 0 1-10 11-25 26-50 51-100
 More than 100

28. Did you observe the last vote at the polling station?

Select One:

- Yes No

ANSWER ONLY IF Question #28 is equal to "Yes"

29. If 'yes', at what time did the last voter vote?

ANSWER ONLY IF Question #27 is not equal to "0"

30. Were all eligible persons in the queue at the time of closing allowed to vote?

Select One:

- Yes No Not observed

ANSWER ONLY IF Question #27 is not equal to "0"

31. Were any and all voters prevented from joining the queue after closing?

Select One:

- Yes No Not observed

32. Did the KIEMS kit stop working at any point in the day?

May need to ask the presiding officer.

Select One:

- Yes No

ANSWER ONLY IF Question #32 is equal to "Yes"

33. If 'yes,' what actions were taken?

Select all that apply.

Select Multiple:

- The issue with the KIEMS was resolved
 Replaced with new KIEMS kit (successfully)
 Replaced with new KIEMS kit (also failed)
 Complementary mechanism with FVR Other

ANSWER ONLY IF Question #33 includes "Other"

34. If 'other', please describe:

35. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure

Select One:

was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. **INADEQUATELY** - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). **NOT AT ALL** - The procedure was omitted or was not followed meaningfully. **NOT OBSERVED** - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.

36. How closely did the CLOSING ANNOUNCEMENT procedures adhere to regulations? I have read and understand the definitions.
Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #36 is equal to "Inadequately"

37. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #36 is equal to "Not at all"

38. Please describe the reasons for not choosing Fully or Adequately:

39. How closely did the QUEUE MANAGEMENT procedures adhere to regulations?
Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #39 is equal to "Inadequately"

40. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #39 is equal to "Not at all"

41. Please describe the reasons for not choosing Fully or Adequately:

42. How closely did the SEALING OF BALLOT BOXES (incl. SLOT) procedures adhere to regulations?
Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #42 is equal to "Inadequately"

43. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #42 is equal to "Not at all"

44. Please describe the reasons for not choosing Fully or Adequately:

45. How closely did the RECORDING OF SEAL NUMBERS procedures adhere to regulations?
Observers/agents should also have the opportunity to record seal numbers.
Select One:
 Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #45 is equal to "Inadequately"

46. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #45 is equal to "Not at all"

47. Please describe the reasons for not choosing Fully or Adequately:

48. How closely did the SECURING OF SENSITIVE POLLING MATERIALS procedures adhere to regulations?
Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #48 is equal to "Inadequately"

49. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #48 is equal to "Not at all"

50. Please describe the reasons for not choosing Fully or Adequately:

51. How closely did the STORAGE OF MATERIALS adhere to regulations?
Select One:
 Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #51 is equal to "Inadequately"

52. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #51 is equal to "Not at all"

53. Please describe the reasons for not choosing Fully or Adequately:

54. Which parties/candidates were represented by agents?
Select Multiple:
 Jubilee male agents Jubilee female agents

- NASA male agents NASA female agents
 Other male agents Other female agents

ANSWER ONLY IF Question #54 includes "Other male agents"

55. If 'other,' which party/parties?

Leave blank if unknown.

ANSWER ONLY IF Question #54 includes "Other female agents"

56. If 'other,' which party/parties?

Leave blank if unknown.

57. Which election observation groups were present?

Select Multiple:

- International males International females
 ELOG males ELOG females KHRC males
 KHRC females Other males Other females

ANSWER ONLY IF Question #57 includes "Other males"

58. If 'other,' which EOM?

Leave blank if unknown.

ANSWER ONLY IF Question #57 includes "Other females"

59. If 'other,' which EOM?

Leave blank if unknown.

60. Which, if any, of the following groups did not have sufficient access to the process?

Select Multiple:

- Candidate/Party agents International observers
 Citizen observers Polling staff Media Other
 Not applicable

ANSWER ONLY IF Question #60 does not include "Not applicable"

61. If any, please describe:

How were groups denied access and what was the impact?

62. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)?

Select 'NA' if no interference was observed.

Select Multiple:

- Candidate/Party agents International observers
 Citizen observers Polling staff Media Voters
 Security Local officials Other Not applicable

ANSWER ONLY IF Question #62 does not include "Not applicable"

63. If any interference, please describe:

How were groups causing interference and what was the impact?

64. Were there any problems reported to you by those present rather than those observed directly by you?

(e.g., agents, observers, voters)

Select One:

- Yes No

ANSWER ONLY IF Question #64 is equal to "Yes"

65. If 'yes,' please describe:

Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.

66. How would you evaluate party/candidate agents' performance?

Select One:

- Adequate Inadequate Not observed/observable

ANSWER ONLY IF Question #66 is equal to "Inadequate"

67. Please describe the reasons for not choosing Adequate:

68. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.
VERY GOOD - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the integrity or transparency of the process. **REASONABLE** - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. **POOR** - Procedures were

Select One:

- I have read and understand the definitions.

not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. NOT CREDIBLE - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.

69. What is your team's evaluation of the implementation of procedures by staff at this station?

This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #69 is equal to "Poor"

70. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #69 is equal to "Not Credible"

71. What were the main reasons for not choosing Very Good or Reasonable?

72. Before moving ahead, please review the following definitions regarding the overall assessment of the CLOSING ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

VERY GOOD - No significant problems were observed with the implementation of procedures or environment. The process was fully transparent. REASONABLE - Observed problems did not affect significantly the integrity or transparency of the closing process, but there is room for improvement. POOR - Significant problems with any of the following may have compromised the integrity of the results: Errors in implementing closing procedures; Polling staff subject to intimidation or interference; Observers restricted. NOT CREDIBLE - Observed problems with the closing likely compromised the integrity of the results.

Select One:

I have read and understand the definitions.

73. What is your team's overall assessment of the election environment and process at this station?

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #73 is equal to "Poor"

74. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #73 is equal to "Not Credible"

75. What were the main reasons for not choosing Very Good or Reasonable?

76. Were there any officially lodged complaints?

If applicable, near the end of your observation, ask the Presiding Officer if present or ask observers from other organizations or party/candidate agents.

Select One:

Yes No

ANSWER ONLY IF Question #76 is equal to "Yes"

77. If 'yes', please describe:

Who filed complaints? What were the reasons? How were they addressed?

78. Any other comments?

79. End of Observation (Station):

User/Team	
Observation Time	
1. Geographic Area: <i>Area of Responsibility</i>	Select One: <input type="checkbox"/> Central <input type="checkbox"/> Coast <input type="checkbox"/> Eastern <input type="checkbox"/> Nairobi <input type="checkbox"/> North Eastern <input type="checkbox"/> Nyanza <input type="checkbox"/> Rift Valley <input type="checkbox"/> Western
2. Polling Center Name:	
3. Constituency:	
4. Constituency:	
5. Ward: <i>Provide Ward, if known.</i>	
6. Is the center in an urban or rural area?	Select One: <input type="checkbox"/> Urban <input type="checkbox"/> Rural
8. Number of stations at the center: <i>If the center and the station are the same, please answer "1."</i>	
9. Were there obstacles or barriers on the way to the center that have inhibited general access?	Select One: <input type="checkbox"/> Yes <input type="checkbox"/> No
ANSWER ONLY IF Question #9 is equal to "Yes"	
10. If 'yes', describe: <i>Describe the barriers to public access and to what extent it affected voter franchise. Examples of barriers might include distance from villages or a dysfunctional bridge.</i>	
11. Which, if any, of the following prohibited or disruptive circumstances did you observe OUTSIDE the center? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
ANSWER ONLY IF Question #8 is greater than 1	
12. Which, if any, of the following prohibited or disruptive circumstances did you observe INSIDE the center (but outside the stations)? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
13. Start of Observation (station) (please use 24 hour clock): <i>For example: 3:00 pm should be 15:00 hrs.</i>	
ANSWER ONLY IF Question #8 is greater than 1	
14. Polling Station Number:	
15. If present, please indicate the presiding officer's gender: <i>If the presiding officer appears before departure, please adjust this answer.</i>	Select One: <input type="checkbox"/> Female <input type="checkbox"/> Male
16. Number of staff working at the polling station:	
17. Number of FEMALE staff present (excluding presiding officer):	
18. Approximate number of voters who have voted by time of arrival: <i>If the number of voters is not directly recorded by the polling staff, it may be necessary to ask the presiding officer or other staff to estimate the number of voters or calculate by other means.</i>	
19. Which, if any, prohibited or disruptive circumstances did you observe in the station? <i>Select "None" if you did not observe any prohibited or disruptive circumstances.</i>	Select Multiple: <input type="checkbox"/> Intimidation <input type="checkbox"/> Violence <input type="checkbox"/> Significant disorder <input type="checkbox"/> Security (beyond regulations) <input type="checkbox"/> Other <input type="checkbox"/> None <input type="checkbox"/> Not applicable
ANSWER ONLY IF Question #19 does not include "None"	

20. If any issues, please describe:
What were the prohibited/disruptive circumstances and how did they affect the process?

21. Were any of the following materials missing, insufficient, or incorrect?

Select Multiple:

- Tamper-proof envelopes Voter list(s)/FVR Stamps
 Light source Forms Batteries Rubber bands
 Pens Other Not applicable

ANSWER ONLY IF Question #21 includes "Other"

22. If 'other', please describe:

ANSWER ONLY IF Question #21 does not include "Not applicable"

23. If materials are missing, insufficient, or incorrect, please describe:

24. Does the station appear to be accessible to physically challenged persons, including the elderly?

The UN Convention on the Rights of People with Disabilities establishes an obligation for states to take measures to identify and eliminate obstacles and barriers to accessibility. This requires that people with disabilities will have an opportunity to participate on an equal basis in both rural and urban areas.

Select One:

- Yes No

ANSWER ONLY IF Question #24 is equal to "No"

25. If 'no', describe the impediments as well as any efforts to overcome the impediments or assist the challenged persons:

26. Number of registered voters:

27. Number of ballots received:

28. Number of unused ballots:

29. Number of ballots in box:

30. Number of invalid ballots:

31. Number of blank ballots (if counted separately):

32. Number of valid ballots:

33. Number of spoiled ballots:

34. Number of disputed ballots:

35. Number of 32A forms completed:

36. Please record the number of votes for Jubilee/Uhuru Kenyatta results:

37. Please record the number of votes for NASA/Raila Odinga results:

38. Did you observe any discrepancies during the counting of the remaining results?

Select One:

- Yes No

(i.e. gubernatorial, senator, woman rep, etc)

ANSWER ONLY IF Question #38 is equal to "Yes"

39. If 'yes,' please describe.

40. Before moving ahead, please review the following definitions regarding assessment of PROCEDURES. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

FULLY - The procedure was always or almost always applied correctly. Any procedural errors observed were very minor. ADEQUATELY - The procedure was mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process. INADEQUATELY - The procedure was often not applied correctly; OR the procedural error may have compromised the integrity of the process (even if few instances were observed). NOT AT ALL - The procedure was omitted or was not followed

Select One:

- I have read and understand the definitions.

meaningfully. NOT OBSERVED - Due to circumstances other than those described by the above, the observer was not able to assess the procedure.

41. How closely did the RECONCILIATION OF BALLOT ACCOUNTS procedures adhere to regulations?

This typically includes: * determining the total of number of voters who voted according to the voter's list; * unsealing the ballot box and counting the number of ballots; *reconciling the number of ballots in the box with the number of voters according to the voters' list or other record of the total number of persons who cast ballots;

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #41 is equal to "Inadequately"

42. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #41 is equal to "Not at all"

43. Please describe the reasons for not choosing Fully or Adequately:

44. How closely did BALLOT VERIFICATION AND SORTING adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #44 is equal to "Inadequately"

45. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #44 is equal to "Not at all"

46. Please describe the reasons for not choosing Fully or Adequately:

47. How closely did BALLOT COUNTING adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed

ANSWER ONLY IF Question #47 is equal to "Inadequately"

48. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #47 is equal to "Not at all"

49. Please describe the reasons for not choosing Fully or Adequately:

50. How closely did RECONCILIATION adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #50 is equal to "Inadequately"

51. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #50 is equal to "Not at all"

52. Please describe the reasons for not choosing Fully or Adequately:

53. How closely did RECOUNTING OF BALLOTS adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #53 is equal to "Inadequately"

54. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #53 is equal to "Not at all"

55. Please describe the reasons for not choosing Fully or Adequately:

56. How closely did DISPUTED BALLOTS procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #56 is equal to "Inadequately"

57. Please describe the reasons for not choosing Fully or Adequately:

ANSWER ONLY IF Question #56 is equal to "Not at all"

58. Please describe the reasons for not choosing Fully or Adequately:

59. How closely did COMPLETION OF PROTOCOL FORM adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #59 is equal to "Inadequately"

60. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #59 is equal to "Not at all"

61. Please describe the reasons for not choosing Fully or Adequately: _____

62. How closely did ANNOUNCEMENT OF RESULTS (verbal) procedures adhere to regulations? **Select One:**
 Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #62 is equal to "Inadequately"

63. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #62 is equal to "Not at all"

64. Please describe the reasons for not choosing Fully or Adequately: _____

65. How closely did DISTRIBUTION OF RESULTS (copies of results sheets) procedures adhere to regulations? **Select One:**
 Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #65 is equal to "Inadequately"

66. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #65 is equal to "Not at all"

67. Please describe the reasons for not choosing Fully or Adequately: _____

68. How closely did POSTING OF RESULTS (at station/center) procedures adhere to regulations? **Select One:**
 Fully Adequately Inadequately Not at all
 Not observed/observable

ANSWER ONLY IF Question #68 is equal to "Inadequately"

69. Please describe the reasons for not choosing Fully or Adequately: _____

ANSWER ONLY IF Question #68 is equal to "Not at all"

70. Please describe the reasons for not choosing Fully or Adequately: _____

71. Did agents have an opportunity to sign the results? **Select One:**
 Yes No Not observed

ANSWER ONLY IF Question #71 is equal to "No"

72. If 'no', please describe: _____

ANSWER ONLY IF Question #71 is equal to "Yes"

73. If 'yes', did any agents elect not to sign the results? **Select One:**
 Yes No Not observed

ANSWER ONLY IF Question #73 is equal to "Yes"

74. If 'yes', please describe: _____

75. Which parties/candidates were represented by agents? **Select Multiple:**
 Jubilee male agents Jubilee female agents
 NASA male agents NASA female agents
 Other male agents Other female agents

ANSWER ONLY IF Question #75 includes "Other male agents"

76. If 'other,' which party/parties? _____
Leave blank if unknown.

ANSWER ONLY IF Question #75 includes "Other female agents"

77. If 'other,' which party/parties? _____
Leave blank if unknown.

78. Which election observation groups were present? **Select Multiple:**
 International males International females
 ELOG males ELOG females KHRC males
 KHRC females Other males Other females

ANSWER ONLY IF Question #78 includes "Other males"

79. If 'other,' which EOM? _____
Leave blank if unknown.

ANSWER ONLY IF Question #78 includes "Other females"

80. If 'other,' which EOM? _____
Leave blank if unknown.

81. Which, if any, of the following groups did not have sufficient access to the process? **Select Multiple:**

- Candidate/Party agents International observers
 Citizen observers Polling staff Media Other
 Not applicable

ANSWER ONLY IF Question #81 is not equal to "Not applicable"

82. If any, please describe:

How were groups denied access and what was the impact?

83. Did you observe any interference leading to negative impact on the election process? If so, which of the following groups interfered (negatively)?

Select Multiple:

- Candidate/Party agents International observers
 Citizen observers Polling staff Media Voters
 Security Local officials Other Not applicable

Select 'NA' if no interference was observed.

ANSWER ONLY IF Question #83 does not include "Not applicable"

84. If any interference, please describe:

How were groups causing interference and what was the impact?

85. Were there any officially lodged complaints?

If applicable, near the end of your observation, ask the Presiding Officer if present or ask observers from other organizations or party/candidate agents. **Select One:**

- Yes No

ANSWER ONLY IF Question #85 is equal to "Yes"

86. If 'yes', please describe:

Who filed complaints? What were the reasons? How were they addressed?

87. Were there any problems reported to you by those present rather than those observed directly by you?

Select One:

- Yes No

(e.g., agents, observers, voters)

ANSWER ONLY IF Question #87 is equal to "Yes"

88. If 'yes', please describe:

Please note the actors involved, how it was resolved, the apparent impact and any supporting evidentiary corroboration.

89. How would you evaluate party/candidate agents' performance?

Select One:

- Adequate Inadequate Not observed/observable

ANSWER ONLY IF Question #89 is equal to "Inadequate"

90. Please describe the reasons for not choosing Adequate:

91. Did you observe the KIEMS TRANSMISSION of the presidential results?

Select One:

- Yes No

ANSWER ONLY IF Question #91 is equal to "No"

92. If 'no', describe why you did not observe KIEMS TRANSMISSION?

93. Were the results successfully transmitted?

Select One:

- Yes No

94. Was the process transparent?

Select One:

- Yes No

ANSWER ONLY IF Question #94 is equal to "No"

95. If 'no', please describe:

96. Were there any disputes when the KIEMS results were transmitted?

Select One:

- Yes No

ANSWER ONLY IF Question #96 is equal to "Yes"

97. If 'yes', describe:

98. Before moving ahead, please review the following definitions regarding the overall assessment of IMPLEMENTATION OF PROCEDURES BY STAFF. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed. **VERY GOOD** - Procedures were always or almost always applied correctly. Any procedural errors observed were very minor and did not affect the

integrity or transparency of the process. **REASONABLE** - Procedures were mostly applied correctly. Procedural errors observed did not appear to affect the integrity or transparency of the process **POOR** - Procedures were not applied correctly; OR procedural errors significantly affected the transparency of the process and/or may have compromised the integrity of the process. **NOT CREDIBLE** - Important procedures were not followed correctly, and these problems likely compromised the integrity of the process.

Select One:

I have read and understand the definitions.

99. Before moving ahead, please review the following definitions regarding the overall assessment of the COUNTING ENVIRONMENT AND PROCESS. Mark the selection below to indicate that you understand the definitions and refer back to this page if needed.

VERY GOOD - No significant problems were observed with the implementation of procedures or environment. The counting process was fully transparent. **REASONABLE** - Observed problems did not affect significantly the integrity or transparency of the counting process, but there is room for improvement. **POOR** - Significant problems with any of the following may have compromised the integrity of the results: errors in implementing counting procedures; Counting staff subject to intimidation or interference; Observers restricted. **NOT CREDIBLE** - Observed problems with the counting likely compromised the integrity of the results.

Select One:

I have read and understand the definitions.

100. How closely did the DATA RECORDING/ENTRY procedures adhere to regulations?

Select One:

Fully Adequately Inadequately Not at all
 Not observed/observable

101. What is your team's evaluation of the implementation of procedures by staff at this station?

This evaluation should be based upon the procedures evaluated earlier in the checklist as well as any procedural factors that may have been omitted from the checklist. Please refer back to the answers provided to questions about procedures as needed to inform the overall evaluation.

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #101 is equal to "Poor"

102. What were the main reasons for not choosing Very Good or Reasonable?

ANSWER ONLY IF Question #101 is equal to "Not Credible"

103. What were the main reasons for not choosing Very Good or Reasonable?

104. What is your team's overall assessment of the election environment and process at this station?

Select One:

Very Good Reasonable Poor Not Credible

ANSWER ONLY IF Question #104 is equal to "Poor"

105. What were the main reasons for not choosing Very Good or Reasonable?

106. End of Observation (Station):

107. Any other comments?

Aggregation 2 Kenya 2017



User/Team

Observation Time

1. Is the constituency reporting constituency level results or the national tally?

The results being reported at the national level ARE NOT official. The official results MUST BE recorded at the constituency level.

Select Multiple:

National Constituency

ANSWER ONLY IF Question #1 includes "National "

2. If 'National,' why are they not reporting the constituency tally?

3. Have you observed a scanned copy of the 34A for each of the polling stations in the constituency?

The tally center must record the tally of the total vote count recorded for each polling station within that constituency.

Select One:

Yes No

ANSWER ONLY IF Question #3 is equal to "No"

4. If 'no,' explain why not:

5. Have you observed the original 34A for each of the polling stations in the constituency?

Select One:

Yes No

ANSWER ONLY IF Question #5 is equal to "No"

6. If 'no,' explain why not:

7. Is the RO recording the tally of the 34A forms in the required 34B form?

The results must be recorded in FORM 34A. For example, the results are not to be directly entered an excel spreadsheet for example.

Select One:

Yes No

ANSWER ONLY IF Question #7 is equal to "No"

8. If 'no,' explain why not:

9. How transparent is the tallying process?

10. Which party and candidate agents are present?

Select Multiple:

Jubilee male agents Jubilee female agents
 NASA male agents NASA female agents
 Other male agents Other female agents

11. Were party agents allowed to review and sign the tally center form 34B?

Select One:

Yes No

ANSWER ONLY IF Question #11 is equal to "Yes"

12. If 'yes,' describe:

13. Were any groups barred from observing the tallying process?

Select One:

Yes No Not observed

ANSWER ONLY IF Question #13 is equal to "Yes"

14. If 'yes,' describe:

Information and Communication Technologies

This appendix provides a report assessing the information and communication technologies (ICT) used during the Aug. 8 general elections and the Oct. 26 presidential rerun elections. It summarizes key findings from the Carter Center’s Kenya 2017 election observation mission and offers recommendations to improve Kenya’s ICT systems for future elections.¹

International obligations and standards require that the tallying and transmission of results be verifiable, transparent, and open.² The Independent Electoral and Boundaries Commission (IEBC) took great strides before the elections to implement the recommendations outlined in the report of Kenya’s Independent Review Commission (also called the Kriegler Commission) issued following the 2007 elections and also took steps following the Aug. 8 elections to address the vulnerabilities highlighted in the Supreme Court’s Sept. 1, 2017, ruling, which invalidated the results of the Aug. 8 presidential election.³ Nonetheless vulnerabilities remain in key areas and should be addressed well in advance of the next elections.

The Kenya electoral process includes paper-based results tallying and tabulation forms as well as electronic ICT systems that were introduced to increase voter confidence in the election process. The paper-based results path consists of polling station-level results forms (34A forms), constituency-level results forms (34B forms), and the national-level result form (34C form). The electronic Kenya Integrated Election Management System (KIEMS) software is used to identify voters and to transmit results data.

The results transmission process (including paper forms and electronic means) has an uneven security profile; i.e., several security mechanisms, which protect some parts of the system but not others, were put in place. For example, the content of the constituency-level results forms, referred to as 34B forms, is verified multiple times against the polling station-level forms. However, the database used to create the aggregated national electoral results form, or 34C form, is not verified against any paper forms.

Importantly, the verification of digital information with the physical paper forms, such as the 34A and 34B forms, provides critical integrity guarantees for key parts of the result transmission process. Integrity and transparency are enhanced when political party agents and observers have access to scrutinize verification processes. However, several vulnerabilities remain in the current system design, as follows: The formulas and data in Excel forms used to aggregate the results are not independently verified; the electronic Kenya Integrated Election Management System software used to transmit results data from the polling stations does not facilitate quick security patches or updates; the population of the database used to construct the national aggregated

¹ This report is based on election observation and conversations with experts and stakeholders from the Independent Electoral and Boundaries Commission, International Foundation for Electoral Systems, the vendor Safran/Morpho, Kenya ICT Action Network (KICTANET), the National Super Alliance (NASA), among other stakeholders. In preparation for this report, the Center did not have access to software and hardware architecture documents, deployment plans (documents containing all details on how a technology is used and deployed), or sources codes.

² U.N., ICCPR, Article 19(2); AU, Convention on Corruption, Article 9; CoE (Committee of Ministers), Recommendation (2004)11 on e-voting, Article 98; CoE (Venice Commission), Code of Good Practice, sec. 1.3.2.xiv

³ Kriegler and Waki reports. Summarized Version, 2009. Revised Edition

results, form 34C, is not publicly verified by observers or party agents; and digital signatures are not provided to guarantee the authenticity of the data published on the IEBC's website, including for the scans of the polling station, constituency-level, or national results forms (34A, 34B, or 34C, respectively) or other documents relevant to establish the authenticity of the election results.

In general terms, the introduction of election technologies into the election process always brings security challenges. Adversaries may try to attack the system. Any party may sow doubt in the integrity of the system, including the election result, even though no attack has actually occurred. Both challenges have the same effect: loss of trust in the election result. Evidence-based election processes that are verifiable and transparent are the best way to guard against actual and perceived threats. In a highly polarized electoral environment — characterized by high levels of mistrust, including in electoral administration bodies — evidence-based electoral processes can prove significant to engender and rebuild trust in the electoral process.⁴

For future elections, The Carter Center recommends a rigorous independent security analysis of the results transmission system and steps to further increase its security. The Center further recommends that the IEBC consider implementing two independent result paths, one purely electronic and the other purely paper-based. The IEBC should identify strategic points in the process during which the results of the electronic result path could be compared with the results of the paper-based result path. A results transmission system implementing two independent paths would be simpler to execute and to understand, easier to maintain, less resource-intensive, more transparent, and more secure than the current hybrid system. The Center also urges the IEBC to conduct a final verification of the digital election result against the original votes at the ballot box by implementing a postelection statistical audit to further establish the accuracy of the electoral results and increase the transparency of the tabulation process.

Conclusion

Work remains to ensure that the biometric voter register is up to date and continuously maintained and to simplify the result transmission process and make it more secure and credible. Several steps can be taken to strengthen the ICT components of the electoral process, which will serve to increase transparency and voter confidence. The IEBC should require its contractors and their subcontractors to allow an open access ICT architecture subject to independent, third-party verification and scrutiny in its design, testing of security protocols, and implementation of results transmission. The legal framework should allow sufficient time for postelection audits and recounts. These become especially important when presidential results are challenged. For future elections, statistical methods should be incorporated to compare electronic and paper results data and to compare the election results against the ballot box, as part of a broader set of steps to enhance confidence in transparent and credible election results. Stakeholders should consider amending the legal and administrative framework to require the conduct of a statistical audit, as it has potential to increase public confidence and trust in the electoral process and results of future Kenyan elections, independent of any election technology deployed.

⁴ A parallel vote tabulation, sometimes implemented by domestic observer groups, remains an important check to assess the accuracy of official results. The parallel vote tabulation conducted for Kenya's Aug. 8 presidential election corroborated the official vote totals.

Methodology

The Carter Center deployed a core team of experts and observers in the lead-up to the Aug. 8, 2017, general elections. Although the short-term observer delegation, deployed during the immediate election day period, included a data analyst and the Carter Center's chief technology officer, the core team for the Aug. 8 election did not include a dedicated ICT expert. In light of the substantial questions regarding technology and elections that surfaced during the Aug. 8 election, the Center deployed an ICT expert to join the core team in the lead-up to the Oct. 26 election.

To assess the quality of the election technologies used in the Oct. 26, 2017, presidential election, the Carter Center core team conducted interviews with electoral stakeholders and observed how the technology was used, in particular the KIEMS kits, Excel files used to aggregate election results, and back-end computer servers. To collect information and observations, Carter Center observers visited polling stations; tally centers; and the ICT rooms at the national tallying center at Bomas, Kenya, and reviewed source materials, including IEBC training manuals for polling staff. In this report, The Carter Center provides an evaluation of the election technologies studied during the Oct. 26 election, including an assessment of their integrity, privacy, transparency, and verifiability.

Integrity

The integrity of data is central to the credibility of the overall electoral process, and this includes data in storage as well as data in transit. Mechanisms to ensure data integrity include *redundancy* and *cryptography*. Redundant result paths, for example, decrease the likelihood that someone could tamper with the data without detection, as an adversary would have to control all different paths to effect a change in the data. In the case of cryptography, data is either encrypted, which protects the data because it is extremely difficult to read and alter, or the data contains a digital signature, which means that the data is accompanied by another piece of cryptographic information that could be used to confirm the authenticity of the sender. Cryptographic methods can also be used to build append-only logs or ledgers that can be written but not altered.

Privacy

Elections deal with private and confidential data that should be protected. In the Kenyan context, there are several aspects of the ICT system with confidential data that should be protected: personal information, including biometric data, about each voter; cryptographic keys that consist of long sequences of randomly generated numbers used to establish the authenticity of the polling station and its transmitted data; passwords to log into laptops; and the QR codes (two-dimensional bar codes that are used to open and close the KIEMS kits for operation).

Transparency of the Results Tabulation and Transmission Processes

Computer systems are black boxes designed to compute results, but the operations executed by computer systems are, in general, not observable. Therefore, to create transparency in ICT-based

elections, international organizations do not observe the technology. Rather, they assess other artifacts surrounding the technology including, but not limited to, the results of feasibility studies; requirement documents outlining the objectives that a system should satisfy; architecture documents outlining the system design; source codes; deployment plans that include where servers are located, how they are protected, and backup policies; and policies for hiring and vetting election staff and written training materials, among other written items. These documents can be reviewed before or after an election, and they ensure a certain level of quality of the process themselves; however, they do not alone render the operations of an election technology transparent or credible.

There are different reasons for this. Digital information is represented in a computer system by electrons trapped in memory made of silicon or by magnetizing small areas on a computer's hard drive. None of these physical effects are easily observable, if observable at all. Even worse, it is impossible to confirm whether an adversary has compromised the technology (software or hardware), either before or during an election. Once adversaries have gained access (for example, by hacking or social engineering), they can alter configuration files, add new users, change the content of databases, and install or update new programs; e.g., installing malware with the goal to change the election result or disrupt the election altogether. Finally, the enormous complexity of modern computer systems makes it very difficult, if not impossible, to know what to observe. Modern computers consist of millions if not billions of transistors and software of several millions of lines of code.

During the Kenyan elections, the IEBC relied upon a set of complex technology systems with software systems by multiple vendors, including the KIEMS kits, laptops, scanners, computer servers, and cloud solutions.

In light of the above, in order to establish transparency, assessment of the ICT technologies used in an election should not be considered in isolation. ICT systems must be combined and linked with other non-ICT processes that produce paper recounts or other evidence; for example, cast ballot papers or paper forms completed and signed by IEBC staff and agents, which can be assessed as part of other steps to verify key electoral information, including results.

Verifiability

Given the challenge of ensuring transparency for ICT processes in elections, the technologies used should be made verifiable; i.e., they should offer mechanisms that allow agents and other observers to check the evidence produced (if any) during an election, such as ballot papers, paper forms, immutable computer logs, or cryptographic proofs, to help ascertain whether the election technology performed as expected. This also means that the evidence must be unalterable, a property that is extremely rare in the digital world. By checking a cryptographically secured (and hence unalterable) log file, one can detect any unanticipated changes; e.g., whether a vote-stealing software running as malware in the background has altered the election result. By checking a digital signature, one can ascertain with confidence the authenticity of a scanned 34B form. Such mechanisms would both provide assurances that the data is secure and protect the perceived integrity of the election results against false claims of fraud.

Detecting potential concerns is the first step toward taking remedial actions to correct any errors. These actions are not of technical nature but should follow the rules laid out in the legal framework. In the Kenyan context, for example, when the polling station tally forms (34A) differ from the constituency-level aggregated results (form 34B), according to the law, the content of the polling station-level results forms shall prevail.⁵ Verifiability provides the highest degree of assurance since full transparency of election technology is unattainable.

Information and Communication Technology System Architecture

The election technology used by the IEBC during the Oct. 26, 2017, presidential election included technologies both procured from private vendors as well as technologies developed in house. Structurally, the election technology consisted of two parts: the biometric voter register and the results transmission system. The one piece of hardware essential to both is the Kenya Integrated Election Management System. The kits resemble iPads, equipped with fingerprint readers, and were used during voter registration to record the biometric fingerprints for each voter and during voter verification to confirm whether voters were registered in the biometric register. During the Aug. 8, 2017, and the Oct. 26, 2017, elections, KIEMS kits also were used to identify voters using their fingerprint and after the closing of the polling stations to submit digital images of the 34A forms to the IEBC. During the Aug. 8, 2017, election, the KIEMS kits were used for two additional tasks:

- (1) *Numeric result transmission:* The presiding officer at each polling station used the KIEMS kits to enter (using a keyboard displayed on screen) the numeric vote totals corresponding to the data of the completed 34A form. The polling station results form (34A form) was legally binding by law, and the transmission was designed to include a digital scan of the form 34A. However, because of a misconfiguration of the KIEMS kits, the presiding officers were able to submit the numeric data without the accompanying scan, breaking the established protocol and causing distrust in the results transmission.
- (2) *Transmission of forms 34B:* The returning officer at a tallying center used the KIEMS kits to scan and submit a scan of the 34B form to the computer servers hosted on the premises of Safran/Morpho, a French company and vendor of the KIEMS. The communication protocol used by the KIEMS was the secure file transfer protocol, which requires that each KIEMS has the appropriate built-in credentials (password or possibly a cryptographic private key) to access Safran/Morpho's computer servers.

Carter Center experts have reconstructed the system architecture based on conversations with electoral stakeholders and on observations of how the technology was deployed in the field during election day on Oct. 26, 2017.⁶

⁵ In a court case in April 2017, the Court of Appeals found that the form 34A should be the legally binding results of the election. The ruling in the case, Civil Appeal No. 105 of 2017, found that the IEBC could only note discrepancies in the forms, however, and that challenges to the results should be addressed by the courts.

⁶ Carter Center observers did not observe the use of KIEMS kits for voter registration. Observers did observe use of the KIEMS kits for voter identification on polling day.

Stakeholder Map

Various stakeholders were responsible for running the infrastructure during the Kenyan elections. For the Aug. 8 election, the IEBC hired Safran/Morpho to deliver the KIEMS kits and to develop a back-end computer database for storing the scans of the various 34A, 34B, and 34C files as well as the numeric vote totals entered into the KIEMS kits at the tallying center. The vendor was responsible for securing the data stored on its servers. During the Aug. 8 election, the IEBC also developed its own ICT capabilities and stored and maintained the election results in numeric form on its own servers. These partial results paths overlapped and were dependent of each other.

For the Oct. 26 election, the IEBC implemented technological changes in response to the Supreme Court's ruling invalidating the Aug. 8 electoral results, which helped to increase the transparency of the results transmission process. The Oct. 26 election had only one result path (as illustrated in Figure 2), which did not include electronically transmitted results. Under a new contract, Safran/Morpho also updated the software running on the KIEMS kits and corrected the problem experienced in August in which the system permitted election officials to send the numerical results without the scanned tally form.

The configuration of the KIEMS kits was quite inflexible, and the devices were configured for two candidates only for the October rerun election. Ultimately, the Supreme Court found that all the presidential candidates who contested in August should be included on the ballot. Presiding officers were subsequently trained to disregard the entry fields for the numerical results and to submit a digital image of the form 34A only.

In response to security concerns regarding the use of a secure file transfer protocol, Safran/Morpho contracted a company to provide a web application, or piece of software that runs in the browser on the client computers, so that the 290 constituency-level tallying centers could submit scans of the 34B forms to Safran/Morpho's computer servers. In addition, the IEBC contracted a firm to deliver services for visualizing the information online that was stored in Safran/Morpho's back-end computer servers. To illustrate the security of KIEMS, Safran/Morpho commissioned a series of security reviews and penetration tests from several prominent international companies.

Biometric Voter Registry

The KIEMS kits were used during both the August and October polls to identify voters biometrically and to alert IEBC staff if a voter tried to cast a ballot in the wrong voting station.⁷ Every polling station was prepared with a printed voter register for their station. This register contained personal information, including a picture identifying each voter.

⁷ KIEMS is also a safeguard to ensure data of deceased voters in the voter roll is not improperly used and to prevent duplicate voting.

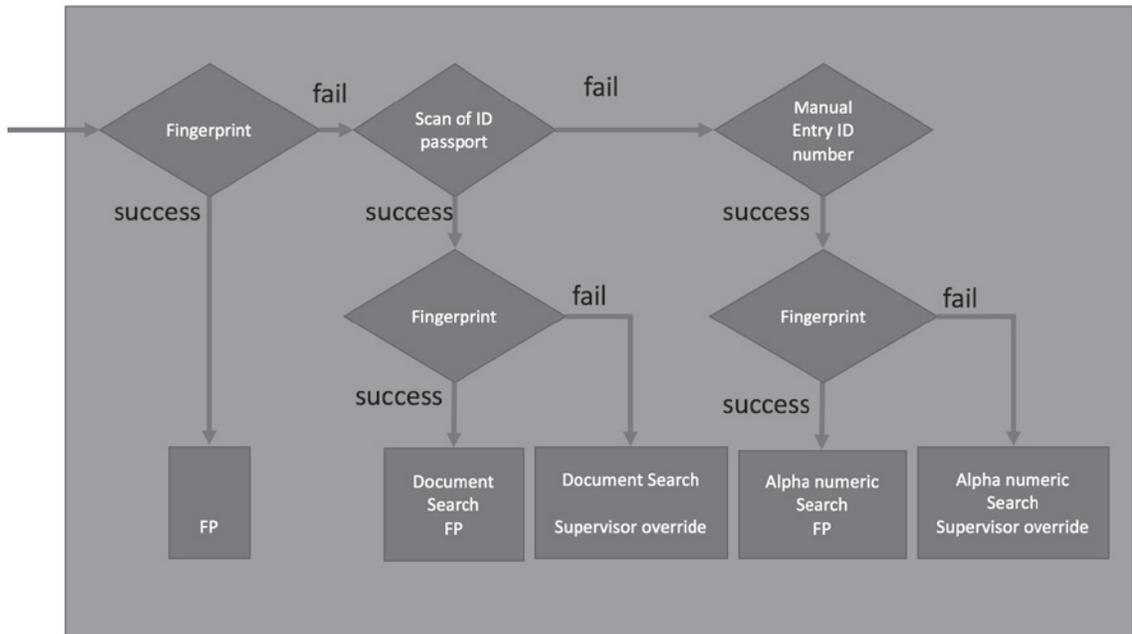


Figure 1: Voter Identification Using KIEMS Kits

Figure 1 depicts the process of voter identification using the KIEMS kits. IEBC personnel first attempted to identify voters by scanning their fingerprint. If the voter could not be identified biometrically using the KIEMS kits, IEBC personnel could locate a voter's file by conducting a document search or by scanning their ID card or passport with the KIEMS kit. After locating the file, the staff then scanned the voter's fingerprint. If the second scan of the fingerprint failed, polling staff supervisors could enter the voter's document number into the KIEMS kit and conduct an alphanumeric search to identify a voter, overriding the electronic system. In order to complete the voter identification process, polling staff were required to repeat the fingerprint scan in the KIEMS kit, unless a supervisor bypassed the system. Once identified electronically, voters were also manually checked off the printed voter register. Therefore, the biometric voter register used a redundant result path to conduct voter identification.

Carter Center staff observed some technical challenges with the KIEMS kits during both the August and October elections. In some instances, voters were not identified by their fingerprints on the first try. If polling staff experienced a complete breakdown with the KIEMS hardware, they could identify voters using the printed version of the electoral roll only and were required to complete a voter identification and verification form (form 32A) to document the use of the manual procedure and the voter's identity. In some instances, observers reported that polling staff did not consistently fill out the requisite form during the August polls.

Results Transmission System

The results transmission system was designed to transfer vote totals from the polling stations to the Bomas national tallying center, where the nationwide result would be tabulated and reported on a 34C form. The IEBC modified the results transmission system from the August polls for the

October presidential election. The version used on Aug. 8 was electronic. Presiding officers were expected to submit the numeric vote totals of their polling stations and a scanned copy of the signed 34A form with the KIEMS kits. The IEBC displayed the aggregated vote total of the numeric data, transmitted electronically, on a screen at the national tallying center.

The version used on Oct. 26 was based on the physical transfer of 34A and 34B forms. The information flow through the results transmission system for the Oct. 26 presidential election is summarized in Figure 2. At the close of polling, the presiding officer at each polling station broke the seals and opened the ballot boxes before the counting commenced. After counting the ballots, the polling staff recorded the results on a 34A (physical) form, which was signed by observers and agents. The presiding officer then used the KIEMS kit to scan the form, creating a digital version that was sent to Safran/Morpho's computer servers, where they were stored. This report refers to the digital versions of the form as 34A (digital). According to Safran/Morpho, the integrity of the 34A (digital) was guaranteed in transit through the use of cryptographic methods, and authenticity of the file was guaranteed and checked through a digital signature.

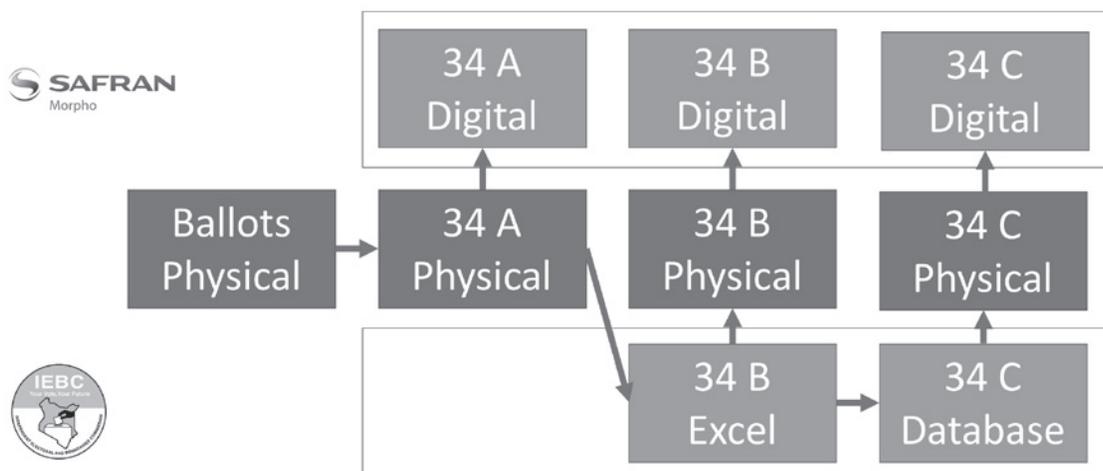


Figure 2: Results Transmission System: Oct. 26 Election Information Flow

The official results path followed the blue arrows from the physical ballots to the 34A polling station form to the 34B Excel charts, which were transferred to the 34C database and printed 34C national-level tally form.

All artifacts, ballots, broken seals, copies of the forms, and other materials were stored in plastic ballot boxes, which were subsequently resealed. The boxes, together with 34A (physical) forms, were then transported to the constituency-level tallying center, where all incoming 34A (physical) forms were recorded in an Excel file. This file, the 34B (Excel), was provided to each constituency-level tallying center by the IEBC on a flash drive. Once completed, the 34B (Excel) was printed and signed and became the 34B (physical) form. The form was scanned and submitted through the web application to the Safran/Morpho computer servers, becoming the 34B (digital) file. The physical copies of the 34A forms were assembled in folders and submitted, along with the flash drive containing the 34B (Excel) and the 34B (physical) forms, to the national tallying center at Bomas, Kenya. The plastic ballot boxes with all evidence were

then shipped to a county office in each of the 47 constituencies, where they were reportedly securely stored.

At the Bomas national tallying center, IEBC staff copied the 34B (Excel) files from the flash drives to populate the 34C (database). To this end, the IEBC had written a program that extracted the relevant part of the 34B (Excel) form and inserted it into the 34C (database). Once the 34B (Excel) forms from all 47 constituencies were processed, a physical version of the 34C (physical) was printed and signed. This form represented the official election result for the Oct. 26, 2017, election. Eventually, IEBC officials scanned the form and uploaded the scan to the Safran/Morpho computer servers as 34C (digital), not depicted in Figure 2.

According to Safran/Morpho, presiding officers encrypted and cryptographically signed the 34A (digital) forms before transmitting them from the KIEMS kits to the vendors' computer servers to guarantee the integrity of the forms in transit. However, it was unclear how the signing key, an encrypted signature used for signing the scans, was constructed and where it was stored.

The physical paper ballots were reviewed only once on election day. The polling station staff, agents, and observers were present when the ballot box was opened, the votes were counted, and the physical 34A forms were completed. After the digital scan of the 34A was transmitted to the Safran/Morpho servers via the KIEMS kits, the polling staff placed all artifacts, ballots, forms, and broken seals (from opening the ballot box before counting) into the ballot box, which was sealed and prepared for transport to the tallying center of the constituency. The ballots were never reviewed again in the process.

The results transmission process was not fully effective due to gaps in the verification process. Some information was rechecked multiple times; for example, the content of the forms 34A (physical) against the scanned version of the 34A file (digital), and the 34B form (physical) against the information stored in the 34B Excel files. In contrast, other information was not verified; for example, the mathematical formulas defined in the 34B Excel files were not reviewed. Also, party agents were not present when the database for the 34C forms was populated.

Results Forms

Result forms appear in many different manifestations in the IEBC's result transmission system. Figure 2 depicts a vertical dependency of the three different manifestations of the result forms (physical, digital, and numeric) and a horizontal dependency capturing the order in which result forms must be completed and aggregated, namely from left to right.

Vertical dependency: *Physical* manifestations that are tangible and printed on paper. These are depicted as blue rectangles in Figure 2. *Digital* manifestations refer to digital pictures or digital scans of paper forms. They are depicted as orange rectangles. Lastly, *numeric* manifestations of election results refer to Excel files or databases and are depicted as green rectangles.

Horizontal dependency: Data from the ballots are aggregated on the 34A form, which is, in turn, aggregated and recorded on the 34B forms, which is then aggregated and recorded on the 34C

forms. Therefore, the result of every single polling station appears in eight different manifestations, both physical and digital, from the polling station-level to that of the constituency and national results.

Clearly, the justification for the design of this result transmission process is that redundancy creates transparency. If a form were generated in error, then by repeatedly checking the different forms against the others, errors could be caught and corrected, and if no errors were identified, the redundancy would provide evidence that the election results are accurate.

Figure 2 describes the process of deriving the 34C form. The physical manifestation of the result forms — which are signed by polling staff and party agents, observed by domestic and international observers, and posted publicly — can be reviewed and compared for accuracy by any interested party.⁸ However, the nonphysical (digital) manifestations of the result forms reside in computer and Excel files, which can be easily altered by users with access, insider attackers, or other adversaries. The digital versions of the forms residing on IEBC's servers do not provide any mechanism for verifying the integrity and authenticity of digital documents. To alleviate this shortcoming, every system that submits a digital document should produce a digital signature, which could be checked by anyone accessing the IEBC's website. In the cryptography literature, there are different digital signature schemes that could be considered to address this challenge. A digital signature would increase the transparency of the system and make it easier to confirm the authenticity of the data.

Among the different manifestations of the result forms, a few are important for the correct computation of the election results. As depicted in Figure 2, the physical ballots, the physical 34A forms, the Excel sheets containing the 34B information, the database containing the 34C information and, of course, the printed 34C form are important. The digital scanned versions of the 34A and 34B forms — stored on Safran/Morpho back-end computer servers, hosted on the IEBC's website, and made available to the public — are not part of the result path. Also, two mutable (i.e. can be altered by, for example, an inside attacker or a person with privilege, possible even in a way that cannot be detected) manifestations, the 34C Excel and the 34C database, are on this result path, which means that if either has been compromised, a malicious attempt to influence the election result could go unnoticed. The result path is critical: Any successful attack against any of the components on this result path would affect the overall election results. To hedge against this risk and to increase the chances of detection, a second and independent result path should be defined, because it is more difficult to gain access and to attack two independent result paths, and alter the results of each, than to alter one critical path.

The digital scans of the result forms are made available to the public from the servers of the vendor Safran/Morpho, whereas the numeric result data (entered in the Excel files) is kept on IEBC's servers and is not accessible to the public. Since the tabulation of the final result relies exclusively on the numeric data, Safran/Morpho's role in the back end of the process in determining the results is greatly diminished. The IEBC owns the data and controls the communication processes as to how the data should be published. Results were announced on

⁸ Paper forms can be changed or altered, which underscores the importance of the presence of party agents and observers and the public posting of polling station results immediately after and for some period of time after the conclusion of counting. Tabulation forms should be standardized and include appropriate security stamps.

Oct. 30, four days after the Oct. 26 vote. The extended tabulation period affected the accuracy of voter turnout estimates announced by the IEBC because the 34C Excel and 34C database were only available several days after election day. Rather than waiting, the IEBC published voter turnout and internal (and potentially inaccurate) data collected from the KIEMS kits alone, which did not include voters identified through manual procedures, to make inaccurate and confusing statements about voter turnout.

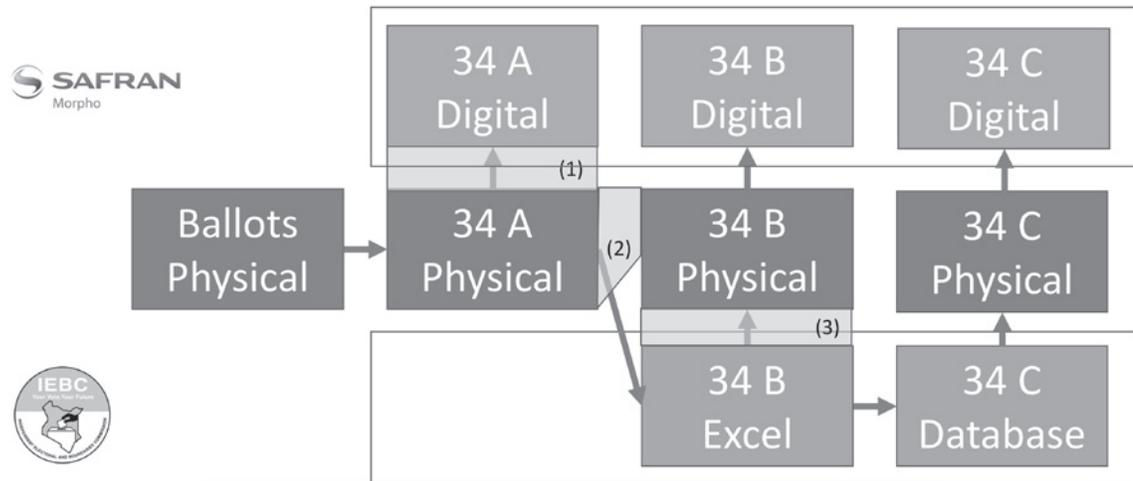


Figure 3: Result Transmission System: Verifications During the October Polls

Verification

The various manifestations of forms 34A, 34B, and 34C imply that there is redundancy in the way data is represented. Leaving aside the question of whether this redundancy is useful, it increases the risk of mistakes through misinterpretation, incorrect transcription, or alteration due to a cyberattack. To cope with this, the redundancy requires continuous checking and rechecking to confirm whether the various manifestations are internally consistent, a process which is referred to as “verification.” Figure 3 depicts the results transmission process from Figure 2 augmented with yellow blocks to express those verifications which were (partially) observed. Ideally, all manifestations in Figure 3 should be verified independently, both vertically (all 34A manifestations contain the same information) and horizontally (all 34A forms are included in 34B forms, which are included in the 34C form).

For the Oct. 26 election, The Carter Center reviewed the training materials and observed the results transmission process and found that only some of these verifications were scheduled to take place or were conducted in practice. The yellow connectors in Figure 3 represent the verifications. The IEBC performed publicly observable verification ceremonies at the constituency-level tally centers, where the 34A (physical) were compared to the 34A (digital) in step 1, and again at the national tallying center at Bomas, Kenya, where IEBC officials verified that the data from the 34A (physical) forms was consistent with the data in the 34B (physical) forms in step 2 and that the 34A (physical) information was also transcribed accurately into the 34B (Excel) form in step 3 during the Oct. 26 polls. As both verifications are carried out at the same time, they also confirmed that the 34B (Excel) contained the same information as the form

34B (physical). The IEBC also reported that they conducted additional quality assurance activities in the back office, for example, verifying the 34C (database) against the 34B (Excel) forms; however, these verification activities were not publicly observable.

Verification activities intended to create transparency and to build public trust were organized at the national tallying center and documented in the training materials⁹:

1. The presidential returning officers were responsible for checking the forms 34A (physical) against the 34A (digital) forms. See also Figure 3 box (1) and the training manual, page 30, item 2.
2. Presidential returning officers also were responsible for checking the forms 34B (physical) against the 34A (digital) forms. See also Figure 3, box (2) and page 30 of the training manual, item 6. The Carter Center notes that this step does not require validating the sums of valid votes, as recommended in the Kriegler report. To check whether the sums were accurate, the presidential returning officers would have had to add the data by alternative means; for example, by using a pocket calculator. As part of this step, the officers also were responsible for verifying the forms 34B (Excel) against the 34A (physical) forms. See also Figure 3 box (3) and page 30 of the training manual, item 1.

Not all steps of the critical result path are verified.

1. After the count, the 34A (physical) was not verified against the physical ballots. This implies that typos and/or other edits to the 34A (physical) forms could pass unnoticed.
2. The aggregate information on the 34B forms was not verified against any of the other materials. Because the 34B (physical) form was a printout of the 34B (Excel) form, errors in arithmetic could go unnoticed.¹⁰ This, too, deviates with the recommendations contained in the Kriegler report.¹¹
3. When data is extracted from the Excel form and inserted into the database, programming errors or cyberattacks could accidentally or intentionally lead to wrong information on the 34C sheet. This is problematic for several reasons: The IEBC has the responsibility to determine the correct results, and if the process produced inaccurate results, the IEBC would have to handle any fallout in the media and repair the damage to the public trust. Carter Center staff did not observe a public verification between the printed copies of the 34B forms and the 34C database or the printed version of the 34C.

There are additional verification steps described in the training materials. However, these verification steps are executed by the same group of people who oversaw the data entry into the

⁹ International Electoral and Boundaries Commission. Quick reference guide for returning officers. IEBC publication, 2017

¹⁰ The 34B (Excel) forms were provided to presidential candidates' party agents for review and scrutiny.

¹¹ The Kriegler report addressed concerns regarding arithmetic error and protecting against it during the electoral process. Excel forms are prepared in advance and contain mathematical formulas used to compute the sums of valid votes. These formulas, which resemble a software program that is executed when the form is completed, could contain errors. The integrity of the data critically depends on the accuracy of these formulas. Formulaic errors can propagate to forms 34B and 34C and can only be detected by independently verifying the data and vote aggregations on the forms. The Kriegler report found that the information technology department did not provide adequate checking procedures for the accuracy of the sum of valid votes (during the 2007 elections). Page 34

respective forms and databases and should not be considered an independent verification of the process.

Security Audits

Although the KIEMS kits and the back-end computer servers storing the scans of forms 34A, 34B, and 34C that are provided by the vendor Safran/Morpho are not on the critical result path, they are intended to create transparency and public confidence. Releasing scans of the 34A, 34B, and 34C forms into the public domain would allow the public to review and confirm the accuracy of the results. However, if an adversary conducted a cyberattack against these servers that altered the image scan files or even created a spoof of the IEBC website to display different result files, these actions would negatively impact the public's trust in the electoral process. Security audits of the KIEMS kits focused on the security of the development processes, and penetration testing was conducted by several different international security consultancies. Safran/Morpho attested that the multiple security audits conducted provided proof that the results transmission system was secure.

Penetration tests are important and consist of someone trying to break into a system, using the tools an adversary would use to manipulate the ICT infrastructure and data. However, a penetration test is easily invalidated; for example, if new vulnerabilities are discovered or different hardware is used. Installing security updates and software patches on KIEMS is a highly manual process. In general, penetration tests have a short shelf life, and they are only reliable if performed after the most recent security update and software patch have been installed.

Findings and Recommendations

The following recommendations suggest possible steps to simplify the voter identification and result processes used during Kenya's 2017 electoral cycle. Such steps could help to secure the electoral processes against system and human error and cyberattacks and could build confidence and trust among Kenyans in the work of the IEBC for future Kenyan elections.

Evidence-Based Elections

The biometric voter register and the result transmission system are intended to create confidence in the results for voters, political parties (both the winning party and, perhaps more importantly, the losing party), observers and, eventually, the courts, including the Supreme Court. The election technologies used in Kenya ideally should be constructed in such a way that they give convincing evidence that the results are accurate to all stakeholder groups, not just during the election but also after the election is completed.

There are three different kinds of evidence that election technologies can construct. *Statistical evidence*, where statistical methods are used to examine election data on one result path; for example, to compare the election results against the ballot box or to compare data on different result paths against each other. The more independent the result paths, the harder it is for an adversary to influence all simultaneously. *Cryptographic evidence*, where cryptographic methods

(i.e., data is either encrypted or the data contains a digital signature) are used to disguise information in such a way that any straightforward attack against the data is foiled. *Logical evidence* refers to log files that are created by the election technology and presented for public scrutiny. It is important that log files are immutable and *append-only*; otherwise, the losing party can easily “cry wolf” and accuse the winning party of log tampering to hide the traces of a cyberattack.

Recommendation: The IEBC should clearly define what kind of evidence the biometric voter register and the results transmission system should produce. Both the biometric voter register and results transmission system should provide two independent redundant results paths, one on paper and one in electronic form only. Processes should be put in place to govern the complete and timely release of this evidence in a form that can be checked by others, including, for example, independent observer organizations. Strong verifiable evidence is the best mechanism to create confidence in an election outcome.¹²

Recommendation: The IEBC should develop better mechanisms to distinguish authentic information from fake information. One way to achieve this is to augment all data and all digital evidence files shared online with a digital signature to check the authenticity and the origin of the file.

To implement this recommendation, polling stations must be given access to a cryptographic signing that must be securely created and managed. The management of such keys must be built in at the design stage and should be described in the overall system architecture. Such an architecture should be carefully reviewed for its security properties, and such reviews should be made public as well. Vendors are usually very keen to protect their intellectual property and typically would like to avoid being criticized in public. However, architecture and security reviews represent an opportunity for the IEBC to improve the security of the overall architecture and to be transparent about quality assurance processes. The Carter Center recommends that the IEBC include a clause in future contracts that offers the IEBC the right to publish any such quality assurance reports.

Vendor Relationships

Only a careful, independent expert review with full access to tender documents, system architecture, security architecture, design documents, software, training manuals, and deployment plans that contain all information about the operational environment of the voter registration and results transmission system could provide the IEBC with the information and instruments necessary to assess risks and improve design and to secure the technology and processes. If the IEBC does not have access to these documents or the right to share them with third-party reviewers, it should insist on this authority.

Recommendation: To increase transparency, the IEBC should require its contractors and their subcontractors to allow open access to architecture documents, cryptographic protocols

¹² The Kriegler report underscored the importance of creating a paper trail to reconcile the electronic result transmission and the physical result transmission. Additional result verification steps must be introduced into the counting and tabulation process to compare the electronic and physical elements.

implemented in KIEMS, all evidence provided by the biometric voter register, and results transmission systems, including append-only log files and source code. Furthermore, the Center encourages the IEBC to require that all documents pertaining to the security of the system, including feasibility studies, reviews of requirement documents, design documents, security, and software architecture, be shared openly among all stakeholders of the election: the IEBC, political parties, observers, and voters. There is a wide range of options regarding how source code can be released, ranging from proprietary closed code to open code, the latter of which is free for everyone to use and modify. Most countries deploy election technologies under a closed source license to protect the interests of the vendor, the notable exceptions being Norway, Estonia, and the state of Victoria, Australia, which have released their software under open-source licenses.

Recommendation: The IEBC should explore ways to lessen its dependency on any one particular vendor. If system architecture and interfaces are transparently defined as recommended above, other vendors would have greater opportunities to propose systems that fit seamlessly into the current architecture.

Recommendation: The IEBC should define how voter turnout will be computed and on what basis. The data computed by its vendors should eventually converge with the IEBC's turnout figures. Unfortunately, the estimates provided by the IEBC during the 2017 elections were not easily understood by the public until the data was compiled from all sources. The fact that KIEMS kits may provide stale data, which does not take into account voters who were processed manually, supports the need for a clear definition and use of accurate data.

Results Transmission Revisited

The IEBC carefully crafted a chain of custody for the paper trail generated during the Oct. 26 presidential election. The result transmission process with all of its manifestations was complex and extremely resource-intensive. It is possible to simplify the result transmission process and enhance its security, while strengthening its credibility through verification of all steps in the process. For example, if the numeric data of the 34A forms were entered in a database, instead of an Excel file on a flash drive, the 34B and 34C forms could be automatically generated and verified at both the constituency and national tallying centers. Additional verification steps, such as calling in results by phone, digital signatures, and append-only logs could be added.

During the 2017 elections, the electronic result path of Kenya's result transmission system was not fully verified because the digital version of the 34C file was not computed independently from the physical version of the 34C file. Also, the Excel files used by the constituency-level tallying centers to report the results to the national level pose a *potential* point of failure in the current design. An error in the arithmetic or formulas in the Excel files may lead to an undetected error in the election outcome.

Recommendation: Re-evaluate the entire result transmission process and simplify the process as much as possible, keeping in mind that all steps should be publicly verifiable to increase public confidence in the results. Two parallel yet independent results transmission paths should be

adopted — one on paper and one electronic path — so that the results can be independently verified at different stages in the process.

Biometric Voter Register Revisited

The biometric voter register is a standalone system that is not connected to Kenya's national registers of births and deaths. Therefore, it is always outdated, and it is a major effort to prepare and update the voter register in advance of an election. Its accuracy is of great importance for creating transparency and building public trust and, thus, it is a concern that there is no process for continually maintaining the voter register.¹³

Recommendation: The IEBC should carefully evaluate and improve the processes in place to keep the biometric voter register up to date.

Legal Framework

Kenya's legal framework provides 14 days to resolve challenges to the results of a presidential election, which renders a full recount infeasible. While a partial, random sample can be conducted within this time period, the legal framework could be further strengthened to allow time to conduct a full recount, if warranted. Such a provision could have permitted a recount of the paper evidence collected during the Aug. 8 presidential election. The legal framework should be updated to require two redundant and independent result paths. Also, requirements regarding IEBC vendor interactions and open access to information, including architecture documents, software, and security reports, should be mandated. The legal framework should also be modified to require a postelection audit, as proposed by the Kriegler report.

Recommendation: Parliament should review and revise the legal framework to increase the transparency of the electoral process by allowing sufficient time for various steps to verify the data and providing multiple independent checks and audits, and if these suggest it is necessary, also to enable a full recount. Such steps would enhance public confidence in the results.

Quality and Security Assessment

Overall, Carter Center observations indicate that the KIEMS kits were relatively easy to use. However, the inability to quickly install security updates is worrisome. A KIEMS kit should be a stateless device, meaning that it is configured only on the morning of the election; for example, by scanning a bar code or a configuration QR code. Using a bar code, the KIEMS kits could have been configured on the morning of the election to include all the candidates on the ballot for the Oct. 26 presidential election.

Recommendation: The IEBC should assess the quality of all system components independent of any vendor, conduct its own quality assurance and penetration tests, and review the security update procedures for all technologies deployed. These results should be made public.

¹³ The Kriegler report recommended the creation of a voter register and voter identification process that is simple and inclusive. It underlines that the voter register should be connected to the national identification register.

Recommendation: The KIEMS software should be changed on all KIEMS kits to (1) allow for the automatic installation of security patches and (2) to turn the KIEMS kits into stateless devices, which are only configured through the information contained in a QR code when officials open the polling station on election day.

Recommendation: The IEBC electoral calendar should provide for sufficient time to assess the quality of the KIEMS technology, also taking into account that the IEBC may have to make changes and provide additional instruction for polling station staff to operate the equipment appropriately. The election laws should be reviewed to ensure that enough time is allowed to reconfigure electronic election materials between an election and a runoff or in the case of fresh elections.

Postelection Audits

The true manifestation of a voter's intent is the paper ballot in the ballot box. The completed 34A, 34B, and 34C forms serve as a manifestation of the collective intent of a group of voters, which requires public confidence that the vote counting process and form completion were legitimate.

Based on this ballot paper evidence, the IEBC computed the election results using the 34B Excel files with aggregation fields and the IEBC 34C database. Technically, to trust the result, one must trust all the machinery used to compute it, and this can prove difficult. Election technologies, such as the KIEMS kits, and other electronic electoral machines run outside controlled lab environments, where interfaces are exposed to the internet and adversaries continuously try to break in. Such a system is admittedly difficult to trust. There is always residual doubt that the results computed by such an election system are legitimate.

There are two ways to engender trust, which is especially important in a highly polarized election where the results are likely to be challenged and/or rejected. One can conduct a full manual recount, which is resource-intensive and may be incompatible with the legal framework. Alternatively, one can conduct a postelection statistical audit, as recommended by the Kriegler report.¹⁴ One such method is a “risk-limiting audit,” in which an auditor examines a random sample of ballot papers to determine whether they reflect the appropriate votes cast and the accuracy of the results.¹⁵ Although IEBC officials would need to plan in advance for such an audit by securing and organizing the ballots for scrutiny, the process could be conducted with a relatively small number of ballots, depending on the margin of vote between the two leading contenders and the audit results. The smaller the margin, the larger the sample size required. If a risk-limiting audit finds substantial discrepancies, auditors examine increasingly larger samples of ballots to identify the correct winner, eventually leading to a full recount, if necessary. This method is being implemented successfully in the United States and elsewhere.¹⁶

¹⁴ The Kriegler report supported the conduct of postelection audits and recommended that the Election Commission of Kenya *institutionalize the practice of postelection audits and evaluations*. This recommendation serves two functions: to improve the quality of data, meaning to identify and remove as many errors as possible; and to collect feedback and identify possible avenues of improvement for the operations of the election management body.

¹⁵ Mark Lindeman and Philip B. Stark. A gentle introduction to risk-limiting audits. *IEEE Security & Privacy*, 10(5):42–49, 2012

¹⁶ The state of Colorado in the United States has recently adopted a law that mandates risk-limiting audits, and other states are following suit.

Recommendation: Kenyan's legislative branch and IEBC should consider mandating a postelection statistical audit, including the possibility of conducting a risk-limiting audit for future Kenyan elections, which could be helpful as part of a broader set of steps to enhance confidence in transparent and credible election results.

Women's Political Participation

Women's Political Participation 2017 Kenya General Elections

The Carter Center deployed a long-term election mission to observe Kenya's 2017 general elections. As part of its observation program, the Center assessed women's political participation as a critical aspect of the electoral process. This report summarizes the Center's key findings related to this component of the observation effort. Recommendations for reform to strengthen women's political participation in the period leading up to the 2022 general elections are included in the Conclusion and Recommendations section of this report.¹

Executive Summary

Kenya established a commitment to strengthen women's political participation with supportive provisions in its 2010 Constitution. Affirmative action mechanisms and directives articulated in the constitution make clear the intent to realize this commitment.

Nonetheless, women candidates and voters face significant political, economic, and social barriers to political participation. Women face cultural stigmatization when running as candidates. A lack of financial resources and political party support limits their ability to get elected. Their presence in leadership roles in government institutions and political parties is limited. They are also the most vulnerable to harassment and vote-buying. Women voters are affected by common cultural practices, educational opportunities, employment status and, particularly, the impact of political attitudes on women candidates.

Despite the many challenges, Kenyan women did not relent, and many competed for office. The number of women who ran as candidates increased by almost 16 percent from 2013. Women competed in party primaries, in some cases becoming the party nominee. They competed as independent candidates. Women were elected governor and senator for the first time. Seventy-eight of the incumbent women leaders in the 11th Parliament, approximately 90 percent, ran for office again in 2017.

However, the gains were limited. Only the Senate and county assemblies include more than 30 percent women, and women reached these numbers due to affirmative action or top-up mechanisms provided in the constitution. Women make up only 23 percent of Parliament, even though they account for almost 50 percent of registered voters.

The 2010 Constitution mandated a two-thirds gender rule, which stipulates that not more than two-thirds of the members of any appointive or elective position should be of the same gender. However, government offices have not yet fully complied with this directive.² Attempts by the Kenya National Assembly to legislate a mechanism to ensure Parliament is in compliance with

¹ Findings are based on meetings with more than 1,200 stakeholders in Nairobi and 36 other counties during the long-term observation. Stakeholders include women aspirants and candidates; representatives of women's groups and other civil society organizations; political party members and leaders; representatives of the Independent Electoral and Boundaries Commission, the National Gender and Equality Commission, other state institutions responsible to protect and promote the rights of women; faith-based groups; local community leaders; community members; and voters.

² Article 81(b)

the rule have failed, even though two election cycles have passed since the adoption of the 2010 Constitution.³

The Independent Electoral and Boundaries Commission (IEBC), National Gender and Equality Commission, Kenya National Commission on Human Rights, other state bodies charged with protecting and promoting women's rights, and civil society organization advocates continue to work to put into place processes that strengthen women's political participation and raise awareness of the constraints women face. However, significant work is needed to create an enabling environment for women candidates and voters. Institutions with a mandate to promote women's political participation, such as the IEBC and the Office of the Registrar of Political Parties, must enforce compliance with prescribed standards and requirements, ensuring accountability when compliance falls short. Male allies in government, political parties, and civil society must join women advocates to put into place mechanisms that promote women's full political participation and, importantly, address the societal, cultural, political, and economic barriers to realizing the gains for women envisioned in the 2010 Constitution.

Kenya's Legal Framework to Protect and Promote Women's Participation

International standards provide that women shall enjoy the same rights as men; prohibit discrimination against women as candidates, party members, and voters; and mandate the use of special measures to ensure their equal representation.⁴ The Constitution of Kenya adopted in 2010 includes various provisions that seek to protect women against discrimination, addresses the needs of women, and promotes women's political participation.⁵ Kenya is also a signatory to various regional and international treaties that protect and promote the rights of women.⁶ However, women's political participation remains limited. Women have not experienced the gains envisioned through the hard-fought and progressive constitutional provisions.

Challenges to Implementation — Lack of Enabling Legislation

Kenya has not fully implemented the constitutionally mandated two-thirds gender rule, which stipulates that not more than two-thirds of the members of any appointive or elective position should be of the same gender.⁷ The constitution provides measures to achieve the rule in county assembly bodies.⁸ However, the constitution does not include a mechanism to achieve the two-thirds gender rule in the Senate and Kenya National Assembly should the electoral results fail to include the requisite gender balance in either of these bodies. Instead, the mechanisms for the Parliament rely solely on the candidacy and election of the required number of women to fulfill the two-thirds gender rule.

³ The law was to be enacted by Aug. 27, 2015. Parliament extended the period by a year to Aug. 27, 2016, but failed to have the law in place. With the current Parliament unconstitutionally constituted, there is presently a case in court seeking to have Parliament compelled to ensure that the two-thirds gender rule is enacted by July 31, 2018. If it is not enacted, the case would go to the court for a full hearing.

⁴ U.N. ICCPR, Articles 25 and 26; AU, AfCHPR, Article 2; U.N. CEDAW, Article 3; U.N. CRPD, Articles 4 and 5(4)

⁵ Articles 27(8), 81(b), 175(c), 177(1)(b), and 197(1)

⁶ Convention on the Elimination of All Forms of Discrimination Against Women; International Covenant on Civil and Political Rights; African Charter on the Rights of Women in Africa

⁷ Article 81(b)

⁸ Article 177(1)(b), which describes a top-up mechanism to address compliance.

The National Assembly consists of 349 members, including 290 elected from single-member constituencies, 47 women elected to represent each county, and 12 members nominated by political parties to represent special interest groups (inclusive of women, among other groups). The Senate consists of 67 members, including 47 elected from each of the counties, 16 women nominated by political parties according to their proportion of members elected to the Senate, and two people with disabilities and two youth nominated by political parties (a male and female nominated for each to promote gender equity).

The Kenyan Constitution stipulates that political party lists alternate between male and female candidates (a “zebra” list).⁹ In addition, during the 2017 election, the IEBC directed political parties to place women at the top of their candidate lists. Although the IEBC has the authority to reject party lists that are not in compliance, political parties are not sanctioned for failing to field women candidates, nor are there effective incentives to do so. While these nomination requirements increase the likelihood of increased women’s representation in Parliament, they do not enforce compliance with the two-thirds gender rule in the scenario when few women are *elected* to the Kenyan National Assembly or Senate. Societal, cultural, and financial hurdles prevent women from running for office and being elected when they do.

Women advocates, allies, and lawmakers have sought to create mechanisms to help realize the two-thirds gender rule. In 2012, the attorney general sought a Supreme Court advisory opinion on whether the two-thirds gender principle applied to the 2013 general elections. The court ruled in a majority decision on Dec. 11, 2012, that implementation of the principle was progressive and set a deadline of Aug. 27, 2015, for its implementation. Parliament extended the date for one year, ostensibly to allow more time to comply with the directive.

The attorney general constituted the Technical Working Group following the 2012 Supreme Court ruling to determine the most viable formula to realize the two-thirds gender principle.¹⁰ The group consulted stakeholders, including government and civil society, and determined that the most viable option was to replicate the mechanism used by members of the county assembly defined in the constitution. The group drafted the two-thirds gender rule laws (amendment bill) 2015. The legislation proposed to amend five laws and compel political parties, the Independent Electoral and Boundaries Commission, and county governments to ensure compliance with the two-thirds gender rule.¹¹

Members of the Parliamentary Justice and Legal Affairs Committee served on the Technical Working Group; however, they did not support the group’s legislation and instead put forward the Constitution of Kenya (amendment) bill 2015, referred to as the Chepkonga bill.¹² The Chepkonga bill was tabled in April 2015 and called for progressive realization of the two-thirds gender rule. It included no clear timeline for achieving full compliance. It passed a first reading

⁹ Article 90(2)(b)

¹⁰ The Technical Working Group comprised representation from 12 institutions: Attorney General’s Office, Ministry of Devolution and Planning (Directorate on Gender); National Gender and Equality Commission; Commission on the Implementation of the Constitution; Independent Electoral and Boundaries Commission; Office of the Registrar of the Political Parties; Kenya National Assembly’s Committee on Justice and Legal Affairs; Senate’s Committee on Legal Affairs and Human Rights; Parliamentary Committee on the Implementation of the Constitution; Kenya Women’s Parliamentary Association; Federation of Women Lawyers in Kenya (civil society representative); Commission on the Administration of Justice.

¹¹ Political Parties Act, Elections Act, IEBC Act, National Gender and Equality Commission Act, County Government Act

¹² The bill was proposed by the committee chair, Hon. Samuel Chepkonga.

and was subjected to public review in the counties. Women members of Parliament, the National Gender and Equality Commission (NGEC), political parties through the Political Parties Liaison Committee, and women's groups vetted the legislation, which was generally rejected. Critics argued that the lack of a clear time frame within which to achieve compliance would instead in practice perpetuate noncompliance. Opponents also urged more consultation and noted that the legislation would require an amendment to the constitution.¹³ It did not go through a second reading.

The attorney general did not table the Technical Working Group-drafted legislation. However, a High Court directive following a suit by the Center for Rights Education and Awareness (CREAW) compelled the attorney general and the Commission on Implementation of the Constitution to prepare and table a bill in Parliament for passage to address the issue before the Aug. 27, 2016, deadline. The attorney general submitted the working group's legislation to the Kenya National Assembly on behalf of the government, and it became known as the Duale bill. The Parliament held a first reading of the legislation on July 30, 2015.

The Duale bill seeks to amend the constitution to achieve the two-thirds gender principle through the creation of special seats to ensure that no gender has more than two-thirds membership in Parliament (Kenya National Assembly and Senate). Under the bill, special seats would be added to each chamber and allocated proportionate to the number of seats won by each political party through party nomination lists to achieve the appropriate gender balance. The top-up mechanism would be activated only if the two-thirds threshold is not achieved through elections.¹⁴ It introduces a sunset clause of 20 years, after which affirmative action mechanisms to achieve the two-thirds gender rule would conclude. It was envisioned that female aspirants would enjoy a level playing field with their male challengers by that time. The legislation further provided that a person elected to any house of Parliament or legislative assembly by way of nomination could benefit from such a nomination for a maximum of two terms to grow the pool of experienced women leaders. The legislation bases the top-up list on the total 349 seats in the National Assembly.

The National Assembly rejected the Duale bill.¹⁵ Following the failure by Parliament to enact the law, a court case was lodged to compel Parliament to enact the law. The High Court ruled on March 29, 2017, that Parliament must ensure enactment of the gender rule within 60 days, as per the constitution.¹⁶ Any Kenyan could petition the chief justice to advise the president to dissolve Parliament if it failed to do so. The 60 days lapsed on May 27, 2017. General elections were scheduled for Aug. 8, 2017. Female leaders and women organizations vowed to move to court to stop the sitting of the 12th Parliament, once constituted, if it were not in compliance with the two-thirds gender rule.¹⁷ Civil society organizations cautioned the country was likely to face a

¹³ An amendment of the constitution can be in the form of a parliamentary initiative or popular initiative and must be approved by a referendum. A constitutional bill requires the support of two-thirds members (233) to pass. The bill is also required to stay in each house of Parliament for at least 90 days between the first and second reading.

¹⁴ The proposed top-up mechanism is similar to that used by members of county assemblies for gender top-up.

¹⁵ In the first vote in April 2016, the bill garnered 195 yes and 27 no votes, with two abstentions. One hundred ninety-nine members were present for the May 2016 vote, with 178 yes and 16 no votes and five abstentions. Many members of Parliament boycotted the vote despite months of lobbying. The bill failed to get the 233 votes it needed to pass the second reading.

¹⁶ In response to a case lodged by CREAW, CRAWN, and the Kenya Human Rights Commission

¹⁷ During a meeting held in July 2017, convened by Concerned Women of Kenya and Coffey International, women leaders led by veteran politicians Hon. Phoebe Asiyo, former member of Parliament, and Dr. Julia Ojiambo, founder of Labour Party of Kenya, gave notice that they would block the swearing-in of the next Parliament until it meets the two-thirds gender rule.

constitutional crisis following the elections, given that it was not possible to meet the two-thirds gender rule even if all the women contesting seats won and the nominated women seats were added.¹⁸

Parliament was dissolved on June 15, 2017, despite the threat of a premature dissolution and before it could pass legislation to implement the two-thirds gender rule.

The two-thirds gender rule was not achieved following the Aug. 8, 2017, elections. The composition of the 12th Kenya National Assembly, which falls short of the two-thirds gender rule, places the Parliament in a precarious position, with the possibility of a court-ordered dissolution. Following the 2017 elections, the Constitution of Kenya (amendment) (no. 4) bill 2018, which has provisions similar to the 2015 Duale proposal, was introduced in the 12th Parliament. The first reading of the legislation was held Feb. 27, 2018.¹⁹

Several nongovernmental organizations have filed cases with the High Court challenging the constitutionality of the National Assembly, citing the fact that its composition does not meet the two-thirds requirement.²⁰ The court consolidated the two cases and held a hearing on the consolidated case on May 8, 2018. The parties agreed to defer the hearing of the matter until after July 30 when Parliament is expected to debate and approve the Constitution of Kenya (amendment) (no.4) bill 2018. The consolidated case, challenging the composition of the Kenya National Assembly and Senate, will proceed to full hearing and determination, if members of Parliament fail to pass the bill.

Failure to implement enabling legislation to realize the two-thirds gender rule creates hurdles for advancing women's political participation and calls into question whether the political will exists to do so. Despite being tabled in Parliament on two occasions and intensive lobbying by women parliamentarians and women's groups, enabling legislation has failed to garner the requisite votes.²¹ This is after an extensive constitutional drafting process that enshrined the two-thirds gender principle in Kenya's Constitution. Critics, including some male members of Parliament, have argued compliance with the rule would increase the cost of running Parliament since it will increase the number of members in both houses of Parliament. Institute for Economic Affairs research estimates that Parliament spending accounts for 1.5 percent of the national budget estimates, a very low rate of government spending.²² It is anticipated that a higher number of seats would not increase significantly the current level of Parliament spending. Critics also contend that there is no need for additional mechanisms on top of those already provided for in the constitution. They argue that the provisions to include women in nominations lists through the special interest groups will eventually lead to the realization of the two-thirds gender rule.

The outcomes of the 2013 and 2017 electoral cycles demonstrate that women have significant hurdles to overcome to reach parity with men with regard to competing for elected office.

¹⁸ Women candidates were 1,462 out of a total of 15,083. They comprised 10 percent of the total candidates.

¹⁹ Public consultations for the legislation are ongoing at the writing of this report.

²⁰ CREAM and CRAWN lodged one case, and the Federation of Women Lawyers–Kenya lodged the second case.

²¹ A constitutional bill requires the support of two-thirds members (233) in order to pass.

²² <https://www.ieakenya.or.ke/downloads.php?page=1464704654.pdf> accessed on Dec. 6, 2017, which analyzed national budget allocation for 2014/2015

Experience suggests that enabling legislation is needed to ensure full compliance with the constitutionally mandated two-thirds gender rule to advance women’s political participation.

Structures to Support Women’s Political Participation

Many institutions have a mandate to support women’s political participation in the electoral process. These include, but are not limited to, the IEBC, the National Gender and Equality Commission, the Kenya National Commission on Human Rights (KNCHR), the Office of the Registrar of Political Parties, and the Office of the Director of Public Prosecutions. Political parties and civil society organizations also play a critical role.

The IEBC has the authority to set nomination fees, develop and enforce the Code of Conduct for candidates and parties contesting the elections, and ensure party lists include sufficient women nominees to help achieve the two-thirds gender rule. During the 2017 elections, the IEBC lowered nomination fees by half for women to support their increased participation. The IEBC and interior ministry jointly advised women to record those heckling or using abusive language against them at rallies to gather evidence of violations of the Code of Conduct. Although the IEBC has the authority to ensure strict enforcement of the Code of Conduct as relates to gender-based discrimination and violence, their actions to do so during the 2017 electoral process were limited. Few formal complaints of harassment and intimidation were filed. The IEBC instructed political parties to include women as the top nominees on their party nominations lists to ensure that women would benefit from the “zebra” (alternative male and female candidates) requirement. However, the directive was neither enforced by the IEBC nor adhered to by the political parties. Only two parties, the Orange Democratic Movement and Ford–Kenya, listed women as the top candidates in their final party lists.

The NGEC promotes gender equality and freedom from discrimination. The KNCHR monitors and reports on human rights violations. These institutions deployed joint domestic observers for the 2017 elections to monitor and report on various aspects of women’s political participation and inclusion in the electoral process. Both commissions issued reports and periodic statements calling attention to and condemning escalating incidences of election-related gender-based violence.

The Office of the Registrar of Political Parties has a key role to play in promoting women’s political participation. Its duty is to regulate the formation, registration, and funding of political parties in accordance with the constitution. The office is charged to ensure that political party governing bodies and membership reflect a gender balance and that parties promote gender equity. Consistent with the constitution, not more than two-thirds of a party’s governing body should be of the same gender. The office is also tasked to ensure that 30 percent of state funds allocated to political parties is utilized to promote the representation of women and other special interest groups in Parliament and the county assemblies. Enforcing compliance with these provisions, as provided for in the 2011 Political Parties Act, would greatly enhance women’s political participation.

Many women are disinclined to report harassment, intimidation, and violence when it occurs, due to cultural stigma and fear of repercussions. The Office of the Director of Public

Prosecutions has a mandate to institute and undertake prosecution of criminal matters and all other related incidents. The office could play a critical role in the protection and defense of gender-based violence victims, including supporting an enabling environment for reporting and providing evidence for these and other crimes. In the lead-up to the 2017 elections, the office created a prosecution team focused on elections, hate speech, and incitement; however, it reportedly did not address offenses specifically faced by women during the campaign period.

Political parties are also essential to the promotion of women’s political participation. Parties have not placed women in leadership positions in an equal manner. Many do not prioritize women candidates for all elected positions, including financial backing. Party leaders and members have not effectively advocated for legislation to implement the two-thirds gender principle. Nor have parties put into place punitive measures to dissuade party members and supporters from harassing and intimidating women aspirants and candidates.

Other stakeholders have created measures to safeguard and enhance women’s political participation. Civil society organizations implemented a digital women’s advocacy campaign (betterthanthis) aimed at raising awareness about the costs of violence against women in elections and the exclusion of women in leadership. The campaign highlighted how violence in public and private spaces, whether explicit or implicit, deters women from participating in the elections process. The digital campaign ran on Facebook, Twitter, Google, YouTube, and third-party websites. Overall, it reached more than 16 million people.²³ Healthcare Assistance Kenya operated the 1195 “violence against women in elections hotline,” which offered rapid response service to survivors of election-related violence and a wide range of survivor referral mechanisms that included hospitals, police, ambulance rescue, and 24-hour telephone counseling services. During the elections, Healthcare Assistance Kenya received several reports of gender-based violence. The Federation of Women Lawyers–Kenya also operated an SMS short code (21661) dubbed “SemaUsikike” or “Talk and you will be heard” in English, where they also received reports of gender-based violence. Domestic observers also assessed the participation of women, publishing reports with findings and recommendations to inform decisions by relevant authorities to strengthen women’s participation in the electoral process.

Barriers for Women’s Participation as Candidates

Kenya has East Africa’s lowest female representation in Parliament, despite a comparatively higher economic status in the region.²⁴ Women running for office report that they face harassment and violence. Financial constraints severely limit their ability to compete in a fair and equal manner with male contenders. Cultural stigmatization impedes participation. These challenges influence many women not to seek office. Many who do exercise this fundamental right drop out at various stages in the race due to the harsh and inhospitable political environment.

²³ <http://www.ifes.org/news/kenyans-say-we-are-betterthanthis-aiming-support-womens-participation-elections>

²⁴ Kenya has the highest and most diverse economy in East Africa. It has an average annual growth rate of over 5 percent for almost a decade. Kenya also ranks highest in the region in terms of Human Development Index. According to the Inter-parliamentary Union (as of March 1, 2018), Kenya has the lowest female representation in Parliament in the East Africa region. At 21.80 percent in the lower house and 30.90 percent in the Senate, Kenya is ranked number 87 out of 189. Rwanda is ranked first, followed by Tanzania (24), Burundi (26), and Uganda (32).

Women candidates face harassment at a larger scale than their male counterparts and are subjected to smear campaigns

Women aspirants and candidates reported to Carter Center observers being subjected to physical harassment and intimidation, beginning as aspirants in the political party primaries and continuing as candidates for the elections. Perpetrators were reportedly often influential male aspirants and candidates. A candidate's store was burned in Nanyuki; her home was the target.²⁵ A candidate in Uasin Gishu reported receiving anonymous threats that her children would be kidnapped. A candidate in Kakamega reported receiving anonymous threats against her own safety.

Cyberbullying has also increased. In Nakuru, a woman aspirant was subjected to bullying via Twitter and Facebook due to her father's non-Kenyan origin, and she was accused of not understanding the challenges faced by everyday Kenyans. Given the pervasive nature of social media, the criticism was emotionally draining to her and her family. She reported to observers that she is unwilling to vie again unless controls for cyberbullying are put in place. A candidate in Mombasa reported that she was ridiculed via social media by her male opponents. A woman leader asserted that the community "starts absorbing stereotypical propaganda spread against women candidates through the social media." A youth leader stated that when "a man is involved in a scandal, it dissolves quickly. But when a woman gets involved in one, she is ruined in politics." Some interlocutors said most women opt out of politics for the fear of exposure of their private lives, something exponentially threatened by social media.

During the 2017 electoral process, women were more vulnerable and subject to smear campaigns and "dirty politics" in the country. Women were targets of false accusations, propaganda, and disinformation campaigns often perpetrated by male opponents, though there also were reports of female opponents engaging in such tactics. In Kiganjo, one female candidate's opponent falsely informed voters that she had been arrested in the past for charges related to stolen ballot papers. The accusation irreparably damaged her image and voters' perceptions of her integrity. It was difficult to correct misinformation, to undo the harm done, since not all voters could be reached again to set the record straight. In Nakuru and Nyeri, women aspirants reported being labeled prostitutes and irresponsible because "that is the reputation that comes with running for office as a woman."

It was reported to observers that women candidates often shied away from formally filing harassment cases for the fear of retaliation and cultural rejection. To raise such treatment publicly often backfires, opening the female candidate to more negative scrutiny, especially if she fails to produce sufficient evidence as judged by the local police. Further, women candidates reported a lack of effective mechanisms within party structures to protect them in cases of threats and harassment.

²⁵ The Nanyuki candidate reported that people burned her store, which had several chickens, goats, and hay. Reportedly, the attackers intended to burn her house, but they did not succeed as firefighters arrived on the scene and were able to extinguish the fire. She said that police were not cooperative in finding the perpetrators of the crime. Until the day of the interview, their identity was still unknown.

Lack of access to funding has adversely affected most women candidates' ability to run for office successfully

Financial constraints impact women aspirants and candidates' ability to present themselves as candidates, to campaign, and to pursue electoral disputes when they believe their case has merit. Positively, the IEBC lowered nomination fees by half for women to promote their participation. Some potential candidates still found the fees too high. More broadly, available funds were insufficient to finance all aspects of a bid for office.

Limited funding inhibited the ability of women candidates to conduct campaign activities. Candidates often finance campaigns by acquiring loans from a financial institution. One of the most important requirements to secure a bank loan is property ownership; however, many women do not own land.²⁶ Fewer women own businesses and are financially self-sufficient to fund a political campaign. Limited funds stymie the ability to print campaign materials (fliers, posters, and banners), air radio or television ads, and publish ads in local papers.

Vote-buying is prohibited in the laws of Kenya.²⁷ However, it has become customary in local politics to provide a "tip" or a "transportation subsidy" for voters who attend candidate rallies.²⁸ The practice is so commonplace that in some instances voters will refuse to listen to a candidate who is not willing to provide this incentive. Women candidates reported little benefit to counter this practice and negative incentives to engage in it, though limited funds largely prevented them from offering "tips" or "subsidies" to potential supporters. Voters will sometimes coerce candidates into disbursing funds to them even when the latter refuse. In Nakuru, a woman candidate reported to observers that she was threatened and denied exit from a meeting before paying attendees. In effect, the candidate had to pay voters to listen to her message and to ensure her safety. In Nyeri, a woman candidate expressed frustration with her opponent who would buy beer for youth supporters, something that she could not do because of the financial costs as well as cultural constraints. A candidate in Nyeri reported that a male candidate from her party sent hecklers to interrupt her rally. They ceased after she offered them flour (Unga) and stayed to support her. Other women candidates reported similar cases where youth showed up asking for money to allow the candidate to speak free of harassment.

Such incidences and the influence of money in the campaign inhibit women from organizing big rallies, which are vital to enhance one's visibility. Women aspirants and candidates reported door-to-door campaigns as the most cost-effective campaign strategy identified by female aspirants, though they recognize it as a time-consuming activity. Cultural constraints on women to canvass during the day, coupled with family responsibilities, created additional challenges for conducting what is often the most cost-effective campaign strategy. Candidates also cited churches as accessible places to address voters.

Some women who lost the primaries and believed they had credible evidence to dispute the election results were unable to challenge the results through the Political Parties Dispute

²⁶ In 2010, it became legal for women to have their name on a land deed; however, their access to land is in many occasions controlled by men.

²⁷ Section 9(1)(a) of the Election Offenses Act, 2016 regards vote-buying as an election offense and introduces a fine not exceeding 2 million shillings or imprisonment for a term not exceeding six years or both.

²⁸ This practice was consistently noted throughout all areas of responsibility covered by observers.

Tribunal because of the prohibitive costs of the dispute process, including the need to travel to Nairobi to defend their case.

Women candidates are still not fully accepted culturally, and stigmas are placed upon those who pursue a political career rather than fulfilling the traditional “female” role

Women candidates cited a prevailing belief in Kenya that men make better leaders than women, which is exemplified by the treatment many women reportedly received from their political parties. Political parties encouraged women candidates to run in the political party primaries, with the understanding that they would be included in the party lists for member of county assembly, National Assembly, and the Senate if they lost. However, the parties did not honor their commitment. Women party members expressed frustration that male-dominated leadership promotes women who men believe are least likely to challenge their authority or to work to end corruption and malpractice. Women candidates reported parties held secret meetings at midnight to discuss funding and make political decisions, excluding women because of their inability to attend at that time. An aspirant and single mother of two was ridiculed by a fellow party male opponent who publicly asked her about her children’s father’s whereabouts. Reportedly, she was forced to withdraw her candidacy due to the aggressive nature of the political competition. Many women candidates ran as independents in response to a lack of party support. Others were unable to do so because of a lack of finances.

Women’s political participation in areas deemed conservative is extremely low and, in some cases, nonexistent. In Narok West, East, and South, for instance, no women ran for the member of country assembly or for a minister of Parliament position. In Narok North and Emurra Dikirr, there was only one female candidate for member of county assembly in each of those two constituencies. At the county level, there was no woman candidate except for the seat of woman representative.

In Transzoia, a male candidate reportedly implored the council of elders to persuade his female opponent to step down on the grounds that she was female, unmarried, and had no right to run for office. In Sigowet-Soin constituency in Kericho County, some areas are named “gentlemen zones,” where it is agreed in the community that only men should be put in leadership positions. In Kilifi, women candidates are discounted and viewed as nonperformers due to the Mijikenda tradition, a patriarchal culture where women are treated like property.

Support for women aspirants is undermined further by the pressures placed on male allies within the community, families, and households. A former female member of county assembly described the bullying and ridicule faced by her husband, offering that it takes a strong man to stand behind a woman leader in a patriarchal society. Husbands who support their wives in leadership positions are reportedly often belittled by their male friends and family members.

There are a few instances in which women successfully overcame cultural stigmatization. In Kiganjo, a candidate for member of county assembly reported that she faced few obstacles addressing the community and was well-received by most voters, including women and youth. She attributed her success to her community work. Indeed, many successful women candidates engaged in community work in the lead-up to the election. However, many interlocutors —

candidates and civil society, security, and business community members — expressed that women must work harder — “10 times as hard” — to prove their capability to lead.

Barriers to Women’s Participation as Voters

Women make up Kenya’s majority unemployed.²⁹ A higher number of females enroll in school; however, more males complete their secondary studies. Females have higher illiteracy rates.³⁰ Employment and culture impact women’s right to vote. Women are disproportionately vulnerable to election-related violence, including that perpetrated by security personnel.

Women’s engagement as voters can be limited by what they do for a living

Pastoralist communities are characterized by their nomad lifestyle. Observers noted that both male and female pastoralists’ livelihood is dependent on following good weather and green pastures. This mobility presents challenges for voter registration and verification. Even when pastoralist families are stationary for a period of time, women tend to spend more time working in the field than men. Civic participation for women in rural, pastoralist communities is uniquely precarious.

Women voters are most vulnerable to the role of money in politics

Interlocutors report that women from low-income communities are vulnerable to manipulation when it comes to vote-buying, accepting money from politicians to sustain their families. Often, they do not privilege any political party or gender and accept funds from more than one (competing) politician. Women voters reported attending male aspirant rallies where “tips” were offered instead of female aspirant rallies that did not provide tips, even if the male aspirant was not their preferred choice.

Cultural norms challenge women’s participation as voters

While women are generally free to vote in many areas of the country, some women’s choice is still controlled by their husbands, especially in rural areas. In Narok, interlocutors reported that it is customary for men to hold on to their wives’ identification cards and decide if their wife will vote. In cases where the couple votes together, the husband decides the candidate for both. Interlocutors reported that women commonly do not question this practice, as it is socially accepted that they abide by their husband’s decision.

In some rural areas, women are discouraged to participate in public forums due to their prescribed gender roles of cooking and taking care of the children. Observers noted that most of the attendees (and all of the leaders) at *barazas* were male.³¹ Carter Center observers noted 30 people attended a *baraza* in Subukia; however, only two participants were women. In another

²⁹ According to the Kenya Integrated Household Budget Survey, the majority of the unemployed for both male and female were in the same age cohort. Females constituted 64.5 percent of the unemployed. <https://www.knbs.or.ke/launch-201516-kenya-integrated-household-budget-survey-kihbs-reports-2/> (accessed April 20, 2018)

³⁰ Overall, the literacy rate for both females and males has decreased compared to 2000. See the World Bank’s Gender Data Portal. Available at <http://datatopics.worldbank.org/gender/country/kenya> Accessed Dec. 4, 2017

³¹ Informal meetings

baraza in the same constituency, there were only male attendees. In Baringo, at a peace meeting organized by the IEBC and community leaders, only one of 11 panelists presenting to over 100 attendees was female, a poll clerk whose role was mainly to pass the microphone.

Discourse used to promote women's engagement in some instances is patronizing and demeaning. Interlocutors reported that a female candidate in Mbita promoted the empowerment of women as part of her campaign. In contrast, the male facilitator at a rally she attended urged female attendees to go to the polling station, vote, and then go back home to cook and please their husbands. Such rhetoric suggests the primary reason to mobilize women voters is to ensure they cast a ballot, as opposed to informing or inspiring them as prospective supporters. It also demonstrates disregard for women as viable candidates.

Women are vulnerable to election-related violence

The charged campaign environment, coupled with the violent protests and excessive use of force by security, increased the vulnerability of women. Following the Aug. 8 elections, there were reports of human rights violations, including beatings and killings by security forces as well as sexual violence against women and girls.³² Multiple organizations and agencies joined an appeal to the inspector general of police and other government agencies charged with protecting the rights of women and girls to raise concerns about cases of sexual violence perpetrated in the electoral period and reportedly committed by police officers.³³ At least 86 cases of sexual and gender-based violence were either reported or documented in Nairobi County in the run-up to the 2017 election and after, with 62 percent of the sexual violence cases perpetrated by police and 38 percent by civilians.³⁴

Despite Challenges Women Do Not Relent: Women Compete for Office

Women candidates defied multiple odds to vie for office in 2017, including discrimination, contrary societal and cultural practices, limited financing, and violence, among other barriers. Female candidates increased by 15.8 percent from 2013. Ninety percent of the 86 female incumbents ran for office again in the August polls. For the first time, women were elected as governors and senators, three each respectively, comprising 6 percent of the total elected for each house.³⁵ At least 87 percent of female members of Parliament who were elected in 2013 defended their seats.³⁶ At least three women representatives elected in 2013 vied for the single

³² See Human Rights Watch (HRW_Kenya_Post-Election killings, Abuse) and Kenya National Commission on Human Rights. The killings included a 6-month-old girl in Kisumu. A 2-year-old girl was also wounded by a stray bullet. Female IEBC staff were assaulted by protesting youth and politicians, who interrupted their trainings in Kisumu.

³³ <http://physiciansforhumanrights.org/library/phr-appeals-to-kenya-to-curb.html>

³⁴ <https://www.theelephant.info/uploads/2017/10/KNCHR-Report-Mirage-at-Dusk.pdf>

³⁵ Charity Ngilu (Governor Kitui) was the first ever female presidential candidate in Kenya. She served as a minister in three ministries with the latest being the Lands Ministry from 2013–2015. Joyce Laboso (Governor Bomet) was the deputy speaker of the Kenya National Assembly in the 11th Parliament. Ann Waiguru (Governor Kirinyaga) is a former Cabinet secretary for devolution where she served from 2013–2015. Margaret Kamar (Senator Uasin Gishu) was the director of the International Centre for Research in Sustainable Development and minister for higher education, science, and technology between 2011 and 2013. She was unsuccessful in 2013 when she vied for the same seat. Susan Kihika (Senator Nakuru) is the former Nakuru County assembly speaker. She was unsuccessful in 2013 when she vied for a parliamentary seat. Fatuma Dullo (Senator Isiolo) was a nominated senator in the 11th Parliament. She served as a commissioner at the Kenya National Human Rights Commission between 2007 and 2012.

³⁶ Naomi Shaaban–Taveta (vied and won); Millie Odhiambo–Mbita (vied and won); Rachael Nyamai–Kitui (vied and won); Peris Tobiko–Kajiado East (vied and won); Grace Kipchoim–Baringo South (vied and won); Alice Wahome–Kandara (vied and won); Alice Wambui–Thika Town (vied and lost); Mary Emaase Otuch–Teso South (vied and lost); Regina Nthambi Muia–Kilome–vied and lost; Jessica Mbalu–Kibwezi

constituency member of Parliament, of which two were successful.³⁷ These wins are key victories for women; the successful bid of four pastoralist women is of particular note.³⁸ In five counties, the members of the county assembly elected women speakers, one of whom had previously been nominated and served as a senator.³⁹

Some women who came into Parliament in 2013 through affirmative action seats successfully ran for elective seats in 2017. These included women representatives who contested for the single member constituency seats and emerged winners.⁴⁰ National Assembly members and senators nominated in 2013 successfully ran for elective seats in 2017.⁴¹ Twenty percent of the total female aspirants were women vying as independent candidates, when their political parties did not support them as party candidates. Two independent women, a minister of Parliament and a woman representative, won their seats.

The successful performance of women who served in leadership positions in 2013 through the nominations process and women's representative office demonstrates the success of affirmative action mechanisms and the importance of putting them into place and ensuring their implementation. Nominated women used their nominations as a stepping stone to elective positions. Elected women representatives competed for other elective positions. Out of the 18 women who were nominated to serve as senators from 2013, seven contested for minister of Parliament, two for women representative, two for Senate, and one for member of county assembly. Out of the five women nominated to the Kenya National Assembly from 2013, two contested for a women's representative seat and one for minister of Parliament.⁴² In 2017, women accounted for 86 percent of the members nominated across all elective positions.⁴³ Affirmative action through nominations boosted the number of women holding office to 845 (35 percent), up from the 9 percent that were elected to office. The total number of women elected to public office, however, falls short of that reached in 2013.

East (vied and won); Mary Wambui–Othaya (lost in party primaries); Esther Murugi–Nyeri (lost in party primaries); Esther Gathogo–Ruiru (lost in party primaries); Hellen Sambili–Mogotio (lost in party primaries); Joyce Cheron Abonyo Laboso–Sotik (vied for governor and won); Cecily Mbarire–Runyenjes (vied for governor and lost in nomination).

³⁷They included Hon. Mishi Mboko of Kilifi who vied for Likoni member of Parliament on an ODM ticket and Hon. Aisha Jumwa of Mombasa who vied for Malindi member of Parliament on an ODM ticket, both of whom were successful. Taita Taveta's Joyce Lay was unsuccessful in her run for Senate on a Jubilee ticket.

³⁸From Samburu West (Naisula Lesuuda), Laikipia North (Sarah Polata), Ijara (Sophia Noor), and Kajiado East (Peris Tobiko)

³⁹These are Nairobi (Beatrice Elachi, former nominated senator. She unsuccessfully vied for Dagoretti North member of Parliament in Nairobi.), West Pokot (Catherine Mukenyang, former member of the county executive committee on health. She unsuccessfully vied for women representative seat in the county), Machakos (Florence Mwangangi, former member of the Judicial Service Commission), Homabay (Elizabeth Ayoo, lawyer), and Vihiga (Mudezi Mbone, lawyer).

⁴⁰Mishi Mbogo and Aisha Jumwa served as the women representatives (affirmative seats) for Mombasa and Kilifi but have been elected to represent Likoni and Malindi constituencies, respectively.

⁴¹Naisula Lesuuda, Martha Wangari, and Sarah Korere, nominated members in the 11th Parliament, were elected as members of Parliament for Samburu, Gilgil, and Laikipia North constituencies, respectively. Janet Ong'era and Liza Chelule (nominated senators) were elected women representatives for Kisii and Nakuru Counties, respectively.

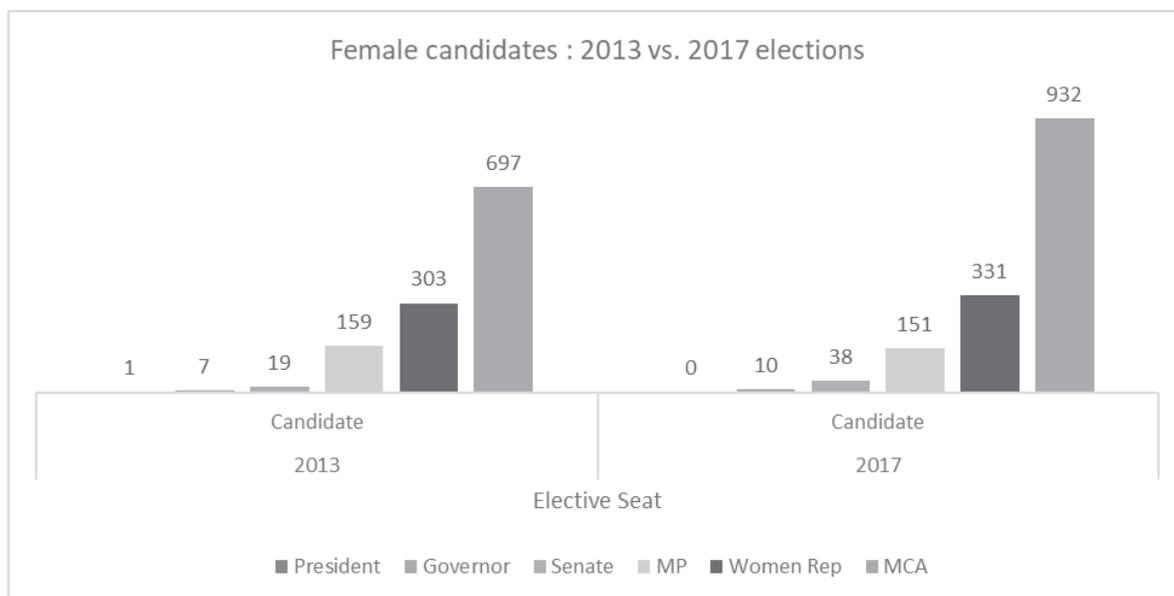
⁴²These included Hon. Beatrice Elachi, majority whip in the senate, nominated on an Alliance Party of Kenya (APK) ticket who vied for Dagoretti North member of Parliament in Nairobi on a Jubilee ticket, Hon. Naisula Lesuuda nominated to the senate on The National Alliance (TNA) ticket vied for Samburu West member of Parliament on a KANU ticket, and Hon. Elizabeth Ongoro, nominated on an ODM ticket, vied for Ruaraka member of Parliament in Nairobi on an AMANI National Congress (ANC) ticket. In the KNA, Hon. Sarah Korere, who was nominated by the United Republican Party (URP) vied for Laikipia North parliamentary seat on a Jubilee Party ticket.

⁴³A total of 779 members were nominated across all the elective positions; women made up 673 of this number.

Comparative Snapshot Women’s Political Participation 2013 and 2017

Female Candidates: Comparison Between 2013 and 2017

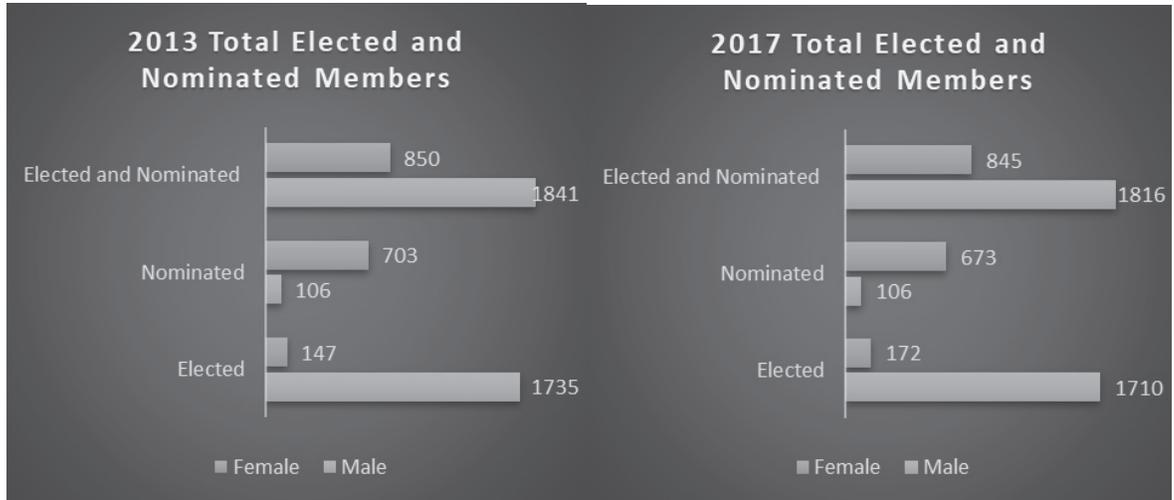
There was an increase in the number of female candidates in 2017 (1,462) compared to 2013 (1,186). The highest increase was in female candidates running for member of county assembly (235 candidates), followed by women running for county women representative seat (28), the senate (19) and governor (three). There was a decline in the number of women candidates running for member of Parliament and the presidency. The number of female candidates for member of Parliament decreased by eight. There was no women candidate for the presidency.⁴⁴



⁴⁴ The only female presidential candidate for 2017 was Nazlin Umar, who has contested for presidency twice before. She was not cleared to run by the IEBC after her name was found to be missing from the register. She was running as an independent.

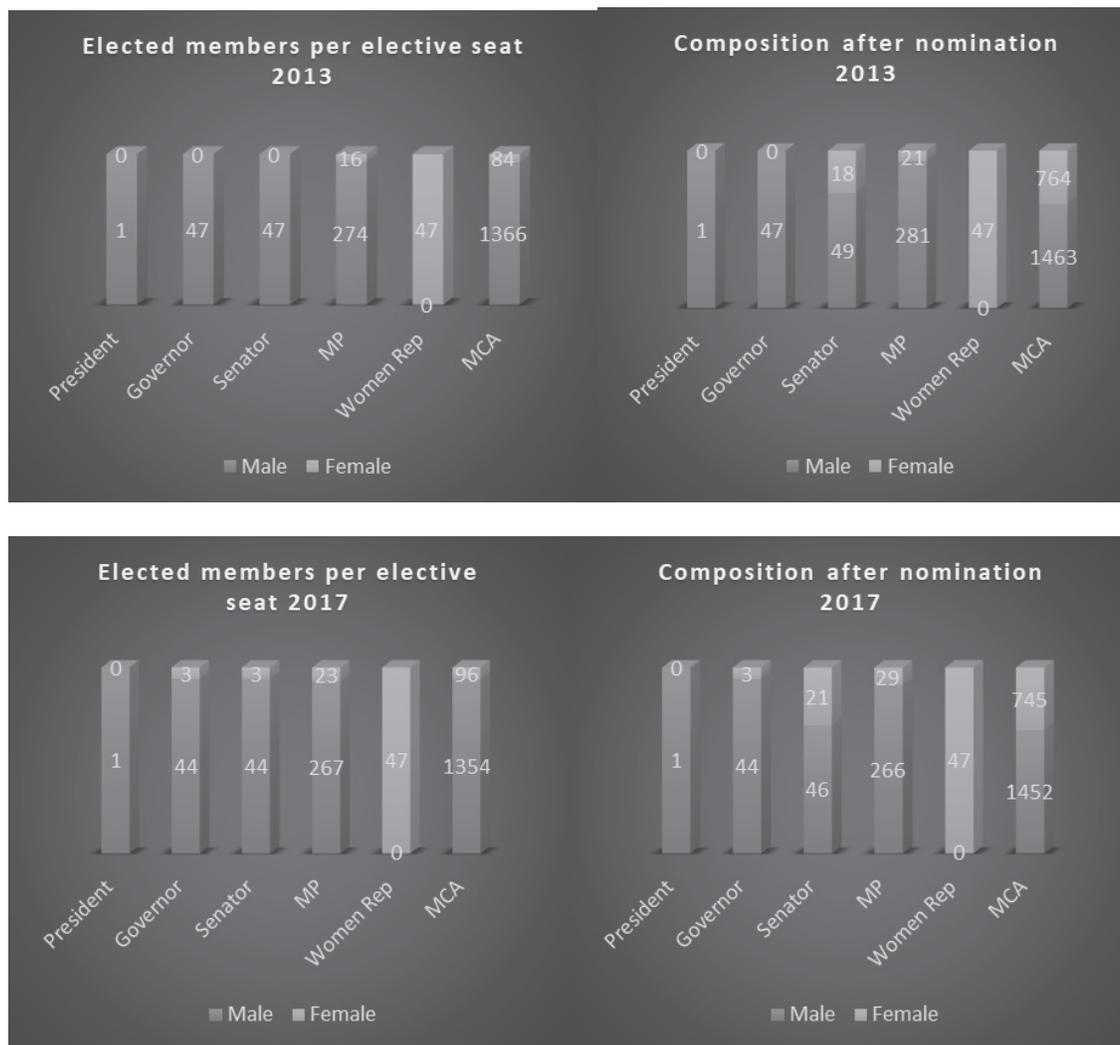
Election Performance Per Gender 2013 to 2017 Comparison

The total number of elected female representatives across all elective positions increased by 25. These represent three governors, three senators, seven members of Parliament, and 12 members of county assembly. The election of more female representatives resulted in a decrease in the number of nominated members by 30, supporting the view that affirmative action measures positively influence the election of more women candidates.



Elected and Nominated Members (Across All Elective Seats) 2013 to 2017 Comparison

After the 2017 election, only the senate and county assemblies have attained the two-thirds gender quota, 31 percent and 34 percent respectively.⁴⁵ There was a slight decrease in the number of female representatives nominated to the county assemblies. Twenty-three female elected members of Parliament comprise 8 percent of all elected members of Parliament. Affirmative action through the nomination of six women members of Parliament, combined with the 47 elected women representatives, brings the total number of women members of Parliament to 76, or 22 percent.⁴⁶

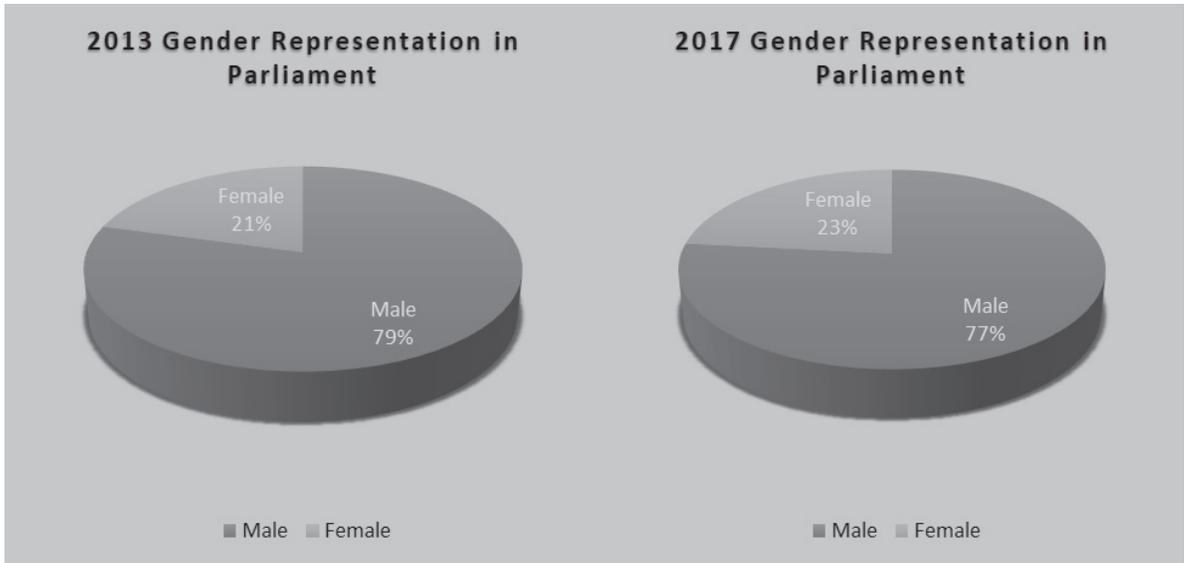


⁴⁵ In addition to the three women who were elected, and according to Article 98 of the constitution, the senate nominated 16 women senators through proportional representation lists. One female youth representative and one female representative of people with disabilities also were nominated. Female members of county assemblies are 745. This includes 96 elected, 559 nominated to fill the gender gap and 90 women nominated to represent marginalized groups.

⁴⁶ Six women were nominated by political parties through party lists in accordance with Article 97(c) of the constitution.

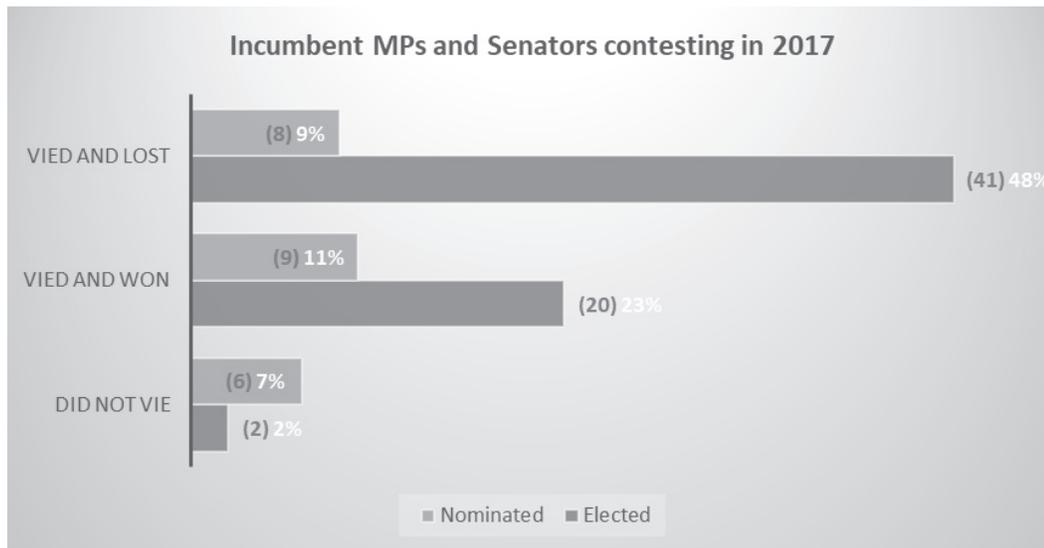
Gender Composition in Parliament 2013 to 2017 Comparison

Female representatives in Parliament increased slightly in 2017 to 23 percent, up from 21 percent in 2013. The election of three female senators as well as an increase in the number of elected female members of Parliament (by seven) contributed to this incremental growth. These charts represent the composition of Parliament (Kenya National Assembly and the Senate) for both elected and nominated members.



Incumbent Women Members of Parliament and Senators Contesting in 2017

The 11th Parliament seated in 2013 included 86 elected and nominated female members (members of Parliament, senators, and women representatives). In 2017, eight of these women (9 percent) did not vie for any elective seat. Seventy-eight (78) vied for various elective seats, with 29 (34 percent) mounting successful bids and 49 women (57 percent) losing their race. The high number of women that remained engaged and competed for office is a positive indicator of the potential impact of affirmative action mechanisms. At the same time, the large number of unsuccessful bids underscores the persistence of significant barriers faced by women candidates.



Appendix I

Carter Center Public Statements and Reports

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

FOR IMMEDIATE RELEASE

May 8, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org

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Carter Center Launches Election Observation Mission in Kenya

NAIROBI — At the invitation of Kenya’s Independent Electoral and Boundaries Commission, The Carter Center has launched an international election observation mission for the country’s Aug. 8 general election.

The Center is accredited by the IEBC to observe the presidential, parliamentary, county governor, and county assembly ward elections. Its core team of experts established a presence in Nairobi on April 14 and deployed 12 long-term observers to locations across Kenya the following week. It will deploy an additional 32 short-term observers in the lead-up to the polls.

The mission will make a comprehensive assessment of the electoral process for compliance with national law and international election standards by observing the campaign environment; the candidate nomination process; the voter registration and verification processes; the political participation of women, youth, and persons with disabilities; the administration of the elections; voting-day procedures; and the counting and tabulation of ballots.

Members of the mission will hold regular meetings with key stakeholders, including political party candidates, civil society organizations, domestic citizen election observers, members of the international community, and representatives of the electoral commission and other institutions charged with supporting the electoral process.

“I am honored that the Center has been welcomed to return to Kenya to observe this year’s elections,” said Field Office Director Don Bisson. “The Carter Center staff and I are pleased to continue working with the Kenyan people, electoral institutions, and political leaders to advance the country’s process of democratization.”

In the closing days of the party primaries, the Center has noted isolated incidents of violence in some areas of the country.

“The Center urges all political parties and other electoral stakeholders to refrain from violence going forward and for parties to call on their supporters to abide by the electoral code of conduct,” said Bisson.

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NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

John Kerry and Aminata Touré to Co-Lead Carter Center Delegation to Kenya Election

FOR IMMEDIATE RELEASE

June 13, 2017

Contact: In Atlanta, Soya Ellison, soya.ellison@cartercenter.org

In Nairobi, Don Bisson, don.bisson@cartercenter.org

ATLANTA — Former U.S. Secretary of State John Kerry and former Prime Minister of Senegal Aminata Touré will co-lead the Carter Center's election observation mission in Kenya. The mission will deploy more than 50 observers throughout the country on election day.

"Each and every time I've visited Kenya, I've been reminded of its remarkable culture, strengthened by diversity and dedicated to democratic principles," Kerry said. "Kenya matters to Africa, and it matters to the international community. I look forward to returning later this summer to observe an important election.

"Kenya has come a long way since the elections of 2007. It is now up to leaders on all sides to ensure that the violence that followed that election isn't repeated, and those of us who will be on the ground observing the elections also have a responsibility to help every citizen feel confident that the process is fair and just. I urge all political parties and candidates to support a fair, orderly, credible, and nonviolent electoral process; respect the electoral code of conduct; and keep faith with the Kenyan people."

Touré said that she is honored to co-lead the mission: "It is my hope that the election will be peaceful and reflect the spirit of democracy that persists in Kenya. To that end I join Secretary Kerry in urging all election stakeholders to act responsibly and call on their supporters to do the same. I believe that Kenya's democracy can emerge from this process stronger than ever and serve as an inspiration to the rest of the continent."

The Carter Center has had a core team and group of long-term observers in Kenya since April. Kerry, Touré, and the Carter Center leadership team will arrive in the days leading up to the election to meet with key stakeholders — including political party candidates, civil society organizations, government officials, domestic citizen observers, and other international election observer missions, before observing polling and tabulation on Aug. 8.

The Carter Center is observing Kenya's general election at the invitation of Kenya's Independent Electoral and Boundaries Commission.

###

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

Carter Center Commends Efforts of Kenya’s IEBC and Urges Stakeholders to Remain Vigilant Against Electoral Violence

FOR IMMEDIATE RELEASE

July 27, 2017

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In Nairobi, Don Bisson, don.bisson@cartercenter.org or +254 (0) 741 768 354

NAIROBI — In a [pre-election statement released today](#), The Carter Center commended Kenya’s Independent Election and Boundaries Commission on its efforts to keep the Aug. 8 election on track despite many challenges. It noted the heightened political competition in Kenya that has resulted from the devolution of power to the counties and the inclusion of many independent candidates, calling it evidence of a strengthening democratic culture.

At the same time, the Center said it remains concerned about the rising tensions witnessed in the campaigns and the level of violence that has prevailed throughout the pre-election period. Recent calls by President Uhuru Kenyatta and his main challenger, Raila Odinga, for an end to political intolerance are encouraging but insufficient. The Center urges politicians and other key stakeholders to continue to denounce all acts of violence and violations of the electoral Code of Conduct. Candidates also should refrain from using any campaign tactics or language that could incite their supporters to engage in violent or illegal behavior.

The Carter Center conducts election observation missions in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that has been endorsed by 50 election observation groups. Its pre-election statement is based on the work of the Center’s core team and 12 long-term observers, who have been in the country since mid-April and have visited 37 counties and 153 constituencies and attended more than 50 rallies to date.

Shortly before election day, more than 60 short-term observers — led by former U.S. Secretary of State John Kerry and former Prime Minister of Senegal Aminata Touré — will join the team

on the ground and fan out across the country on election day to assess the voting, counting, and tabulation processes.

Among the key findings and recommendations in the Carter Center's pre-election statement are:

IEBC. The current IEBC commissioners were appointed only eight months before the general election. Since that time, they have worked to keep the election on track despite many challenges that have delayed preparations. While the IEBC has done a good job in demanding circumstances, its task has been made more difficult by a lack of communication with stakeholders and insufficient transparency about its decision-making. The IEBC should take steps to increase transparency and communication with electoral stakeholders and the general public so that they are effectively informed during the remaining electoral period. Candidates should refrain from making unsubstantiated attacks on the credibility and impartiality of the IEBC and the courts.

Code of Conduct and Election Environment. The intensity of the campaign has increased as election day draws near, bringing an increase in the number of reported violations of the electoral Code of Conduct. Carter Center observers have reported that violations of some parts of the Code of Conduct were not addressed by any of the responsible institutions. The Center encourages the IEBC to be proactive in identifying and prosecuting violations of campaign regulations in last weeks of the campaign. The Center calls on all Kenyan citizens and candidates to commit to holding competitive elections without conflict and to take all steps necessary to secure a peaceful electoral environment.

Voter Education. With less than two weeks until the election, Center observers have noted a lack of education on voting day procedures. The Center urges the IEBC, political parties, and civil society to use the available time before election day to increase voter education and outreach efforts.

Voter Registry and Identification. The IEBC's dedication to a comprehensive and independent audit of the voter register is a positive sign that it is committed to addressing shortcomings noted in prior elections. While the IEBC has taken efforts to correct inaccuracies in the voter register identified by an independent audit, there was insufficient time to act on all recommendations. As a result, inaccuracies persist, including a high number of deceased voters on the register. The IEBC has correctly argued that the biometric voter identification system is designed to prevent any malpractice on election day. However, its success is dependent on the proper

functioning of the nationwide Kenya Integrated Elections Management System (KIEMS) network under full election-day strain. The IEBC should follow through on its plan for a countrywide KIEMS simulation on July 31 to ensure that the technology will function properly and that each polling station has sufficient back-up batteries.

Security Personnel. It is imperative that all security personnel deployed for election day be properly trained and prepared for all eventualities that could emerge to ensure that they respond in an appropriate and impartial manner. It is also important that security forces are not deployed in such a way as to deter voters from voting.

###

Carter Center Offers Condolences to Family of Msando; Stresses Need for Security and KIEMS Testing

FOR IMMEDIATE RELEASE

Aug. 1, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org
In Nairobi, Don Bisson, don.bisson@cartercenter.org

NAIROBI — The Carter Center International Observation Mission in Kenya offers its condolences to the family of Mr. Christopher Msando, ICT manager at Kenya's Independent Electoral and Boundaries Commission. The Center's technical experts enjoyed a productive relationship with Mr. Msando and are personally saddened by the loss.

"We all wish to honor Mr. Msando's dedication to transparent elections," said former U.S. Secretary of State John Kerry. "Security for the elections and all election administrators throughout the electoral process is paramount for the conduct of credible and democratic elections. We hope that his death will not have a chilling effect on voters and electoral authorities."

Secretary Kerry and former Senegalese Prime Minister Aminata Touré will arrive in Nairobi soon to co-lead the Carter Center's short-term observation delegation.

"We urge Kenyan authorities to provide full protection for the IEBC and their professional staff so that they can continue preparations for the elections without fear for their safety," Touré said.

The Carter Center joins with other stakeholders in urging an independent and comprehensive investigation into Mr. Msando's death. The Center further implores politicians to refrain from politicizing this event. Attacks on the IEBC and other independent institutions, whether verbal or physical, remain an unacceptable form of public discourse.

The Carter Center also encourages the IEBC to go forward with the nationwide KIEMS test now scheduled for Wednesday. The success of KIEMS remains an essential step toward increasing stakeholder confidence in the election.

###



COMMUNIQUE ISSUED AT THE JOINT MEETING OF HEADS OF INTERNATIONAL OBSERVER MISSION TO THE 2017 GENERAL ELECTIONS IN KENYA

We the Heads of the following international observer missions present in Kenya: African Union (AU), Common Market for East and Southern Africa (COMESA), the Commonwealth, East Africa Community (EAC), European Union (EU), International Conference of the Great Lakes Region (ICGLR), Intergovernmental Authority for Development (IGAD), National Democratic Institute (NDI) and The Carter Center (TCC).

Recognise that the 2017 general elections are a critical opportunity for Kenyans to show their commitment to the democratic development of the country. Based on our consultations with Kenyan stakeholders over the past weeks, we note efforts made towards the conduct of peaceful, transparent and credible elections so that Kenyans can express their will freely.

We call on the political leaders and their supporters to ensure peaceful elections and respect for the rule of law as they go to the polls tomorrow and through the results process. We further call on them to uphold their commitments under the Electoral Code of Conduct which requires acceptance of the electoral outcome and seeking redress through the established legal channels.

We look to the government of Kenya to uphold its constitutional obligations to provide a secure environment in which Kenyans can vote freely, and to the judiciary to adjudicate appeals in a fair and timely manner.

Across our missions, we have over 400 observers deployed across the country who will follow all aspects of election day and some will remain to observe the tallying process and post-election period.

We wish the people of Kenya well as they proceed to the polls.



1. African Union Election Observation Mission - His Excellency, Thabo Mbeki, Former South African President – Head of
2. COMESA Election Observation Mission – Ambassador Dr. Simbi Mubako, former Zimbabwe Minister of Justice
3. Commonwealth Observation Group – His Excellency, John D. Mahama, Former Ghanaian President
4. EAC Election Observation Mission – Prof. Edward B. Rugumayo, Former Cabinet Minister in Uganda
5. EU Election Observation Mission – Marietje Schaake, Dutch Member of the European Parliament
6. ICGLR Election Observation Mission – Hon. Makumbi Kanya, Member of Parliament, Republic of Uganda
7. IGAD Election Observation Mission - Amb. Tewelde Gebremeskel, Director of Peace and Security Division- IGAD
8. NDI Election Observation Mission – Dr. Aisha Abdullahi, former AU Commissioner for Political Affairs; Hon. Karen Bass, US Congresswoman; Professor Attahiru Jega, former Chair of Nigeria’s Independent National Electoral Commission; Justice Yvonne Mokgoro, former Justice of the Constitutional Court of South Africa; and Hon. Christie Todd Whitman, former Governor of New Jersey.
9. TCC Election Observation Mission – John Kerry, Former United States Secretary of State and Massachusetts Senator and Aminata Touré, former Senegalese Prime Minister



**COMMUNIQUE FOLLOWING THE POSTELECTION MEETING OF THE
HEADS OF INTERNATIONAL ELECTION OBSERVATION MISSION TO
THE 2017 GENERAL ELECTIONS IN KENYA**

Aug. 9, 2017

We the Heads of the following international observer missions present in Kenya: African Union (AU), Common Market for Eastern and Southern Africa (COMESA), the Commonwealth, East African Community (EAC), European Union (EU), International Conference of the Great Lakes Region (ICGLR), Intergovernmental Authority on Development (IGAD), National Democratic Institute (NDI) and The Carter Center (TCC) have agreed that;

Following preliminary consultations on our observations and the recent events in Kenya, it is important to remind all stakeholders that the electoral process is still ongoing. We recognise the tallying of results at all levels is a critical part of the process. We therefore call on the Independent Electoral and Boundaries Commission (IEBC) to continue within the constitutionally provided timeframe, the tallying with full integrity and transparency so that all Kenyans can trust the announced results. The IEBC has put in place a process to provide for the integrity and transparency of the elections that should be allowed to continue. To achieve this, IEBC personnel need to be able to work freely in a secure environment, with time to complete the process.

We call on parties and their supporters to follow the tally process within the provisions of the law as the IEBC continues finalising results based on forms 34A. We note the stated commitment of the IEBC to make scanned copies of forms 34A available to candidates and the public.

We appeal to all citizens of Kenya to remain committed to peace and the integrity of the electoral process. We urge candidates and parties to use the legally provided channels of dispute resolution in case of any dissatisfaction with the process and to urge their supporters to remain calm. We call upon the security agencies to provide appropriate protection, and avoid excessive use of force.

Following the deployment of over 400 observers on election day, some teams will remain on the ground to continue to observe the post-election period.

Our good wishes remain with the people of Kenya.



1. African Union Election Observation Mission - His Excellency, Thabo Mbeki, Former South African President
2. COMESA Election Observation Mission – Ambassador Dr. Simbi Mubako, former Zimbabwean Minister of Justice
3. Commonwealth Observation Group – His Excellency, John D. Mahama, Former Ghanaian President
4. EAC Election Observation Mission – Prof. Edward B. Rugumayo, Former Cabinet Minister in Uganda
5. EU Election Observation Mission – Marietje Schaake, Dutch Member of the European Parliament
6. ICGLR Election Observation Mission – Hon. Makumbi Kanya, Member of Parliament, Republic of Uganda
7. IGAD Election Observation Mission - Amb. Tewolde Gebremeskel, Director of Peace and Security Division- IGAD
8. NDI Election Observation Mission – Dr. Aisha Abdullahi, former AU Commissioner for Political Affairs; Hon. Karen Bass, US Congresswoman; Professor Attahiru Jega, former Chair of Nigeria’s Independent National Electoral Commission; Justice Yvonne Mokgoro, former Justice of the Constitutional Court of South Africa; and Hon. Christie Todd Whitman, former Governor of New Jersey.
9. TCC Election Observation Mission – John Kerry, Former United States Secretary of State and Massachusetts Senator and Aminata Touré, former Senegalese Prime Minister



Carter Center Preliminary Statement on the 2017 Kenyan Election

FOR IMMEDIATE RELEASE

Aug. 10, 2017

Contact: In Atlanta, Soya Ellison, soya.ellison@cartercenter.org
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The Carter Center commends the people of Kenya for the remarkable patience and resolve they demonstrated during the Aug. 8 elections for president, governors, senators, the national assembly, women's representatives, and county assemblies. In an impressive display of their commitment to the democratic process, Kenyans were undeterred by long lines and cast their ballots in a generally calm and peaceful atmosphere.

While the Kenyan people have spoken at the ballot box, the electoral process is still ongoing as the Independent Electoral and Boundaries Commission (IEBC) continues to tabulate and finalize results. Until official results are announced, it is critical that all parties and candidates refrain from making declarations about the results.

Although election day voting and counting processes functioned smoothly, the electronic transmission of results from the polling stations to the 290 constituency centers, where official results are tallied, proved unreliable. The IEBC advised election officials to revert to the paper copies of the results forms, which provided a reliable mechanism to tabulate the results. Unofficial results were also transmitted to the national tally center, where they were posted on its website. Unfortunately, the early display of vote tallies at the national level was not accompanied by the scans of polling station results forms as planned, nor labelled unofficial, leading to some confusion regarding the status of official results.

In light of these problems, the IEBC issued a statement on Aug. 9 calling for patience while the tallying process continued. In addition, the IEBC stated that the presidential results reported on

the website were unofficial – the official results are those tallied at the constituencies. Citing complaints about the electronic results transmission system and other problems, opposition candidate Raila Odinga said that the tally of results at the national tally center was not legitimate and that he would not accept unsubstantiated results. Coupled with the trouble experienced in data transmission, these statements resulted in increased tension among his supporters and created concerns about a threat of violence in some areas of the country.

Despite initial problems with the electronic results transmission, the paper balloting and polling station results forms provided a verifiable mechanism to conduct tabulation in the absence of the electronically scanned results forms. The IEBC is continuing to finalize the tabulation process at the 290 constituency centers, where polling station presidential results forms (Form 34A) are tabulated to calculate the total constituency results (Form 34B), which are then brought to the IEBC national tally center. As in the polling stations, political party agents on the national level had full access to the tallying processes and could cross-check the Form 34A results against copies that were available to party agents in the polling stations. In addition, the IEBC is making scanned copies of forms 34A available to candidates and the public online.

The IEBC's tabulation process, if fully implemented, allows for a high level of transparency and accountability. The IEBC should continue to collect and publish results transparently until the process is concluded, so that the overall integrity of the process can be verified. In addition, all parties and their agents should enjoy full access to the IEBC's tallying processes at all levels so that any discrepancies can be reviewed and discovered.

As the process continues, it is essential that all Kenyans maintain their commitment to peace. If there are disputes about official election results, The Carter Center urges candidates and parties to use established legal channels to resolve them and to ensure that their supporters remain calm throughout the remaining electoral period.

Carter Center Observation Mission. The Center's short-term election observation mission for the Aug. 8 elections was led by John Kerry, former U.S. secretary of state and Dr. Aminata Touré, former prime minister of Senegal. The mission included more than 100 observers hailing from 34 countries in Africa and around the world. On election day, Carter Center observers assessed the electoral process in 424 polling stations in 185 constituencies across 39 counties, and the vote tallying process in 36 constituency tally centers.

The Carter Center's observation mission has benefitted from close collaboration with other international observation missions, including the African Union, COMESA, the Commonwealth, the East African Community, the European Union, ICGLR, IGAD, and the National Democratic Institute, as well as from consultations with key Kenya election observation groups and other stakeholders.

Carter Center observers will remain in Kenya for several more weeks to assess the conclusion of vote tallying and the post-election environment, including any challenges to the results. The Center will issue additional public statements and reports, as well as a comprehensive final report three- to six months after the conclusion of the process.

Based on more than three months of field assessments and reporting, the Center's key findings and conclusions include:

Election day – Voting and Counting. Carter Center observers reported that election-day processes took place in a calm and peaceful atmosphere, and that the opening, polling, closing, and counting process were generally well-conducted. The Kenya Integrated Election Management System (KIEMS) for the biometric identification of voters functioned well in most polling stations, serving as an effective means to prevent multiple voting and to dispel concerns regarding the voter registry. Carter Center observers reported various procedural irregularities that may have resulted from insufficient poll worker training and civic education. For example, many polling stations failed to fill out forms consistently for voters whom the KIEMS system did not recognize, but who were allowed to vote if they provided required ID and were on the voter list. Carter Center observers reported that these instances did not detract significantly from the overall integrity of the electoral process. At a few polling stations, observers noted isolated incidents of misconduct by poll workers, e.g., appearing to invalidate ballots, misdirecting voters to cast ballots in the wrong box, or "assisting" voters who didn't need assistance. Overall, Center observers assessed polling as "very good" or "reasonable" in 406 of 422 polling stations they visited.

Vote Tallying and Results Transmission. As noted above, the electronic transmission of polling station results forms from the polling station level to the 290 constituency centers and to the national tally center proved unreliable. While the data entry of the results from the KIEMS system transmitted successfully to the national tally center, the early display of these tallies was not substantiated by scanned copies of the polling station results forms for the presidential race. Nor were these results clearly labeled as unofficial. Given that the tallying process is ongoing, the Center is currently unable to provide an overall assessment. We will continue to monitor tallying and election results processes in the weeks ahead.

Legal Framework: Kenya has a generally sound and comprehensive legal framework for the conduct of democratic elections. It is regrettable that parliament decided not to apply the Campaign Finance Act to these elections. This allowed parties and candidates to raise and spend any amount of money without public scrutiny. In addition, parliament did not pass legislation to implement Article 81(b) of the constitution mandating that not more than two-thirds of elective bodies be of the same gender.

Campaign: Voters had a wide choice of contestants, all of whom were able to campaign freely without interference from the state. This resulted in competitive and meaningful elections in most areas of the country. The campaign saw polarizing rhetoric between the top contenders for the presidential race and key down-ballot races. There were breaches of the electoral code of conduct, which were largely ignored. Generally,

candidate campaigns geared up toward the latter party of July, with the exception of the campaign for the presidential race. The campaign for president was vigorous, with both leading candidates conducting large rallies across the country. Campaigning for other races was more subdued due to a lack of financial resources.

Electoral Institutions: Unfortunately, some candidates used myriad court challenges to criticize and delegitimize the authority and competence of the IEBC and the judiciary. Some candidates used ethnic identity as a campaign tactic, and multiple instances of hate speech were reported. On Aug. 2, the chief justice of the Supreme Court issued a statement condemning increasing pressure on the judiciary by the political parties.

Although the current IEBC commissioners were not appointed until late January and faced delays because of court challenges to many of their decisions, they still met most of the legal deadlines and delivered the elections on the constitutionally mandated date. However, the commission did not sufficiently communicate with stakeholders. The lack of transparency about its decision-making negatively affecting the confidence and trust of the electorate and political parties. The late modification of rules surrounding the elections, such as conflicting instructions on valid/invalid ballots, sowed some confusion and raised suspicions among opposition parties.

Election Laws: The legal framework contains certain gaps and inconsistencies, including overlapping jurisdiction of the IEBC and the Political Parties Dispute Tribunal (PPDT); too-long deadlines for the resolution of electoral disputes, including candidate nominations; the absence of regulations or procedures for resolving election-day disputes; inconsistent timelines for voter registration; verification and audit of the voter register; vague nomination rules; and some unclear election-day procedures.

Security and Violence: Although the pre-election environment was generally calm, the murder of Chris Msando, the acting head of IEBC's ICT department, barely a week before the election was a deplorable act. In addition, given Msando's important role in the election machinery, his death affected the public mood and instilled fear. On Aug. 4, NASA offices were ransacked, allegedly by security personnel. Finally, the government deployed some 180,000 police and other security officials around the country. While essential for maintaining law and order, many opposition areas regarded this show of force as threatening, given the country's recent history of elections. Since Tuesday's election, some episodes of violence have occurred in various parts of the country, including the death of two people who were reportedly shot by police officers in the outskirts of Nairobi.

IEBC Staff: Training of polling staff was in line with the electoral calendar and was well-organized, comprehensive, and interactive. Commendably, issues that required a uniform approach by IEBC staff were raised at the plenary sessions and either agreed upon or referred to the IEBC for clarification in order to provide for an adequate follow-up.

Participation of women, youth and persons with disabilities: Regrettably, women, youth, and people with disabilities made only marginal gains in the 2017 election. At least half of the women in office in 2013 competed again in 2017, running as incumbents or contesting for different seats. At the time of this statement, it appears that Kenya will

elect its first female governors and slightly increase the number of elected women members of parliament. Women groups and allies continue to advocate for enforcement of the two-thirds gender rule, which requires that all elected and appointed bodies have not more two-thirds of one gender. Youth informed IEBC decision-making through a formal and broadly representative Youth Advisory Committee. People with Disabilities groups supported PWDs aspirants and candidates.

Voter registration: Although the IEBC took commendable steps to clean up the voter register, the lack of transparency during the audit process and the initial reluctance by the IEBC to release the full KPMG report hurt public confidence in KPMG's work and the subsequent steps taken by the IEBC. Though much work remains to address concerns raised in the audit regarding the accuracy of the voter registry, our observers found that the KIEMs functioned properly in 97.6 percent of the polling stations observed and served as an effective mechanism to validate voter eligibility.

Candidate Registration: The nominations process highlighted the uncertainty and ineffectiveness over what criteria are applicable in order to determine whether a candidate has met the requirements of Chapter Six of the Constitution on Leadership and Integrity. The Ethics and Anti-Corruption Commission (EACC) compiled and forwarded to the IEBC a list of 106 aspirants whose integrity was under suspicion; however, the IEBC took no action and cleared all candidates.

Election Dispute Resolution: The new Election Offences Act (EOA) adopted in 2016 contains a number of offenses that overlap with the Electoral Code of Conduct, the Penal Code, the National Cohesion and Integration Act, and the Public Order Act, which created confusion as to which body had jurisdiction over electoral offenses. Nevertheless, the judicial system of Kenya and its election laws provide full and adequate accountability for the election.

Party Primaries: The primaries were chaotic and conducted with little regard for the rules, particularly the requirement that only party members be allowed to vote in the primary. Many of the initial results were overturned by the PPDT on the basis that non-party members voted. Because of this, many had to be re-run. Other problems noted during the primaries included polls not opening on time, lack of control over polling places, and certificates being awarded to the person who lost. There were still a number of cases pending in the courts on election day.

Civil Society Organizations (CSOs): CSOs played an important role in observing all aspects of the election process, releasing reports of their findings inclusive of recommendations for improvement of the electoral system. CSOs and faith-based groups played a key role in promoting peace and mitigating conflict.

Background: Carter Center Election Observation Mission. In response to an invitation from the Independent Electoral and Boundaries Commission, the Carter Center launched an international election observation mission in April 2017, with six core team experts based in Nairobi and 12 long-term observers deployed across the country to assess the campaign and electoral preparations.

The Center's assessment of the electoral process is based on Kenya's legal framework and on international standards for democratic elections. The Center conducts its observation missions

in accordance with the 2005 Declaration of Principles for International Election Observation and the Code of Conduct for International Election Observers.

###

NEWS

THE
CARTER CENTER



ONE COPENHILL ATLANTA, GA 30307

Carter Center Urges Kenyan Election Commission to Finalize Posting of Results

FOR IMMEDIATE RELEASE

Aug. 17, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org

In Nairobi, Don Bisson, don.bisson@cartercenter.org

NAIROBI — Following the release of its Aug. 10 preliminary statement, The Carter Center continues to follow the electoral process in Kenya, including the tallying and public posting of official results and the judicial review of any electoral petitions.

The Center regrets the instances of violence and the loss of life that have occurred during and after the elections, most recently during demonstrations following the announcement of results on Aug. 11. The Center calls on the inspector general of police to protect Kenyan citizens and their right to freely assemble. The police should refrain from excessive use of force and protect Kenyan citizens as they exercise their constitutional right to freedom of expression. The Center urges the government to ensure medical and humanitarian assistance to those in need and calls for full investigations of instances of inappropriate or excessive use of force.

The Center notes that the Independent Electoral and Boundaries Commission has posted on its website the constituency-level results (Form 34B), which include a list of the individual polling-station results. In addition, the IEBC has indicated that most of the polling-station results forms (34A) are also posted on its website and that the outstanding polling stations will be posted soon. The Center urges the IEBC to finalize the posting of the 34As as expeditiously as possible, noting the Aug. 18 deadline for filing challenges to the presidential election results.

Access to official results data is critical for interested parties so that they can crosscheck and verify results, and exercise their right to petition if necessary. Publishing results by polling station is an internationally recognized means to ensure transparent electoral processes and increase public confidence in the integrity of the results.

The Center notes with concern recent steps by Kenyan authorities to revoke the registration of two nongovernmental organizations that have been engaged in the electoral process: the Kenya Human Rights Commission and the Africa Centre for Open Governance. The rights of citizens to participate in public affairs and to enjoy freedom of association are core elements of a democratic society that the state has an obligation to protect. The Center welcome the decision of the cabinet secretary of the Ministry of Interior and Co-ordination of National Government to suspend this action and work with the organizations to reach a swift and effective remedy to allow their work to continue.

The Center will follow the electoral process to its conclusion and plans to issue periodic public reports on its findings.

###



Carter Center Statement on Kenya Supreme Court Ruling

FOR IMMEDIATE RELEASE

Sept. 1, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org
In Nairobi, Don Bisson, don.bisson@cartercenter.org

NAIROBI — Following the decision issued today by Kenya’s Supreme Court, The Carter Center commends the court for conducting an open and transparent judicial process, which gave all parties the opportunity to be heard and ensured due process consistent with the constitution and laws of Kenya.

In response to an election petition challenging the results of the Aug. 8 presidential elections, the court ruled the election null and void based on irregularities and illegalities committed by the Independent Election and Boundary Commission (IEBC) in the transmission of results.

The Carter Center’s [Aug. 10 preliminary statement](#) following the election noted that election day voting and counting processes had functioned smoothly but that the electronic transmission of results proved unreliable. The statement also noted that the IEBC’s tabulation process, if fully implemented, would allow for a high level of transparency and accountability. Following the elections, the co-leaders of the Center’s mission, former U.S. Secretary of State John Kerry and former Prime Minister of Senegal Aminata Touré, publicly discussed concerns about the transmission of results and encouraged all stakeholders to cross-check results during the tallying process and to use established legal processes to address any concerns, and refrain from violence.

The Center issued another statement on Aug. 17 urging the Independent Election and Boundaries Commission to continue to collect and publish the results forms transparently, so that the overall integrity of the process could be verified.

In both statements, the Center stressed that the electoral process was not yet complete and that an overall assessment could not be given until its conclusion, including the resolution of any electoral petitions. Today's ruling is both important and encouraging, because it highlights the independence of the Kenyan judiciary and its important role as a key institutional pillar in Kenya's democracy.

The Center affirms the observations and conclusions in its Aug. 10 and Aug. 17 statements and notes that the Supreme Court's ruling is focused on problems that occurred during the transmission of results that impacted its integrity, and not the voting or counting processes.

Now that the Supreme Court has ruled, it is incumbent on all Kenyans to accept the ruling and prepare for fresh elections. The Center urges the court to release its detailed ruling as soon as possible so that it can inform the new election process going forward, and further urges all stakeholders to support a fully transparent and peaceful process.

###

Carter Center Urges Kenya's Political Leaders to Agree on Key Changes Necessary to Implement Court Ruling for New Election

FOR IMMEDIATE RELEASE

Oct. 4, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org

In Nairobi, Don Bisson, don.bisson@cartercenter.org

[Read full statement »](#)

NAIROBI — The Carter Center today issued a statement urging Kenya's political leaders to work with the Independent Electoral and Boundaries Commission (IEBC) to come to a consensus on the changes necessary to hold Oct. 26's presidential election in accordance with the ruling of the Supreme Court, which ordered the fresh polls.

The Carter Center has had a core team of experts in Kenya since April, monitoring key parts of the electoral process, including voter registration, campaigning, electoral preparations, and the recent resolution of disputes in the courts. That team was joined by a large group of observers who helped monitor voting, counting, and tallying in the days surrounding the Aug. 8 election.

Now, at the invitation of the IEBC, the Center plans to extend its presence to observe the Oct. 26 election. Long-term and short-term observers will join the core team in Nairobi on Oct. 4 and Oct. 20, respectively, to observe critical pre- and post-election processes, as well as voting, counting, and tabulation. The Center will continue to engage with electoral stakeholders and to observe the steps taken by the IEBC and the parties to comply with the court ruling.

Today's statement includes recommendations related to the preparations for the fresh election to help ensure that it complies with the court's ruling, as well as key observations from the Center's team on the overall process to date.

Background

On Sept. 1, 2017, in an historic and precedent-setting ruling, Kenya's Supreme Court annulled the results of the Kenya presidential election held on Aug. 8, finding that the election was not held in compliance with the Kenyan constitution and the electoral legal framework, and ordering a fresh election within 60 days.

In the court's Sept. 20 written decision detailing its reasoning for annulling the results, the court found that the Independent Electoral and Boundaries Commission (IEBC) failed to organize the election in compliance with the constitutional requirement that all elections be simple, secure, transparent, and verifiable. In response to the court ruling, which specifically cited non-compliance with the electoral provisions governing the transmission of results, the IEBC announced steps to comply with the court's ruling and pledged to enhance transparency and accountability.

The Center welcomes the IEBC's efforts to engage more openly with key stakeholders and to allow greater access to the commission's information technology systems. With the fresh election only weeks away, it is essential for Kenya's political party leaders to work with the IEBC to achieve consensus on measures to improve the process and implement the fresh election within the constitutional deadlines. The agreed-upon measures should be guided by the court's written ruling and ensure that the fresh election will be transparent and verifiable, with parties and observers given the required access to observe all aspects of the electoral process and to verify the results on a timely basis.

The reaction of both the main candidates and campaigns to the court's decision has not been conducive to the holding of credible elections on Oct. 26. The Center urges the two candidates to refrain from attacks on the Supreme Court and the IEBC, which only serve to undermine the independence of the judiciary and reduce public trust in the IEBC. Moving forward, the candidates and their respective supporters should focus on the campaign and discuss the issues that affect the daily lives of all Kenyans and the differences between their policy approaches. The Kenyan people deserve this type of campaign.

Recommendations

1. The IEBC should be transparent and involve all key electoral players in the planning process of the fresh elections, including by holding regular consultative stakeholder forums to consult and update the players on its progress. In addition, the IEBC should communicate regularly with the public, providing updates on the electoral planning process and alerting the public to challenges and corrective measures put into place to address them. Political parties should engage constructively with the IEBC to facilitate its work.
2. The IEBC should take the necessary steps based on the court ruling to ensure compliance with the legal provisions regarding result tallying and announcements. As the court stated, tallying of the presidential results should be preceded by receipt and verification of all polling station results forms (34As), checked against entries in the constituency center results forms (34Bs), as provided for in the Elections Act.
3. It is essential that the IEBC ensure that the constituency-level form 34Bs are standardized, the official form is the form used by returning officers, and that forms bear all security features and signatures of presiding and returning officers and agents. If an agent refuses to sign, an annotation of the same should be made on the form as required by the law. Handover and takeover sections of result forms should also be duly signed and stamped.
4. Training of poll staff should incorporate corrective measures based on the court's ruling so that returning officers are fully aware of their responsibility to follow the electoral law and regulations.
5. The IEBC should comply with the court order and ensure that there is a complementary mechanism in place to guarantee a seamless process in case of technology failure. The IEBC should further ensure that electoral stakeholders are aware of complementary mechanism procedures.
6. It is critically important that political parties stop attacks on the Supreme Court and IEBC and focus on the issues impacting the Kenyan voter. They also should work to ensure broad coverage of political party agents across polling stations and especially at the constituency tallying centers. These agents should be well prepared to monitor the counting, tallying, and transmission processes.
7. To enhance the public trust in the KIEMS system and ensure it is functioning properly for the election, the IEBC should conduct a nationwide public test of the results transmission system before the fresh election. The timely testing of KIEMS and other electronic systems necessary to the successful conduct of the election is of vital importance to identify and correct problems, provide transparency, and enhance public trust in the operation of the system. Deficiencies that contributed to problems with the results transmission that occurred in the August election might have been identified and corrected had sufficient testing taken place.

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8. The IEBC should grant access to its IT system for inspection and audit by independent IT experts and those from political parties, and interested civil society organizations (CSOs) as ordered by the court. This is especially important because the court found that this type of access is constitutionally mandated as part of the transparency requirement.
 9. CSOs should continue to play a key role in observing and assessing the electoral process. In the Aug. 8 election, they provided independent and comparative reports, with recommendations for improving the electoral process, providing an important baseline analysis on which to measure Kenya's democratic development. They should continue this activity for the fresh election.

Statement | [Carter Center Urges Kenya's Political Leaders to Agree on Key Changes Necessary to Implement Court Ruling for New Elections »](#)

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Carter Center Urges Parties to Engage in Dialogue and Refrain from Violence; Deploys Limited Observation Mission for Kenya's Oct. 26 Elections

FOR IMMEDIATE RELEASE

Oct. 24, 2017

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In Nairobi, Don Bisson, don.bisson@cartercenter.org

NAIROBI — The current political and electoral context in Kenya is marked by increased insecurity, a lack of dialogue, and narrowing prospects for a credible presidential election on Oct. 26. Therefore, The Carter Center urges Kenya's key political leaders to use the limited time remaining before the scheduled polls to engage in dialogue to find a mutually acceptable way forward so that the Independent Electoral and Boundaries Commission (IEBC) can conduct fresh presidential elections in a peaceful and secure environment.

Although the IEBC has taken steps to improve the technical conduct of the election following the Supreme Court's Sept. 1 ruling annulling the August election, and Chairman Wafula Chebukati has indicated that the IEBC is technically prepared to conduct the polls, recent statements by Chebukati make clear that the current political impasse constrains the IEBC's ability to conduct a credible election. Notwithstanding the 60-day deadline mandated by the Supreme Court to hold the fresh election, there are cases pending before the court that could result in a decision to delay the elections. Any such delay should be used to ensure that the political leaders and the IEBC agree quickly on parameters so that a competitive, inclusive, and credible election can be held as soon as possible.

“Given the heightened political tensions, it is imperative that Kenya’s political leaders find a mutually acceptable path forward for holding credible democratic elections,” said former U.S. President Jimmy Carter. “If sanctioned by the Supreme Court, the main political leaders should signal their support for a short delay in the elections to allow space for renewed dialogue and to agree on any additional electoral reforms necessary to enable credible elections.”

The continued refusal of the two candidates to meet jointly with the IEBC to discuss an agreed-upon way forward has exacerbated an already precarious situation. Raila Odinga, the main opposition candidate and leader of the National Super Alliance (NASA), has indicated that he will not take part in the election and has threatened that NASA supporters might try to disrupt the polls. In the face of such disruptions, and the potential response by security forces, there is a serious risk of election-related violence should the elections go forward, especially in areas with strong NASA support. While Odinga has recently called on his supporters to refrain from violence, it remains to be seen what will transpire. The recent disturbances by NASA supporters to prevent the IEBC from training staff in the party’s strongholds are troubling and unacceptable. Election officials should not fear for their safety in the conduct of their duties.

If there are disruptions, it is incumbent upon President Uhuru Kenyatta and other state actors to exercise restraint when confronted by citizens who are exercising their right to protest peacefully. Security forces should refrain from excessive use of force and take all measures to facilitate an environment in which all Kenyan citizens can securely exercise their right to vote. Officers found to use excessive and disproportionate force should be held accountable for their actions. Any injury or death related to an election is unacceptable and a tragedy both for those families affected and for the country.

Because of the growing insecurity, the uncertain political environment, and the lack of a fully competitive election, The Carter Center does not plan to deploy a full election observation mission to assess the Oct. 26 election. Instead, the Center will deploy a limited observation mission with 10 long-term observers and a small team of election experts to assess the general electoral environment, and key procedural changes implemented by the IEBC, especially related to tallying processes at the constituency tally centers. Given the small size of the team, the Center will not conduct a robust assessment of polling station level processes.

Background:

The Carter Center has had a core team of experts in Kenya since April, monitoring key parts of the electoral process, including voter registration, campaigning, electoral

preparations, and the recent resolution of disputes in the courts. That team was joined by a large group of observers who helped monitor voting, counting, and tallying in the days surrounding the Aug. 8 election. Following the Sept. 1 decision by the Supreme Court to annul the August election, the Center was invited by the IEBC to extend its presence to observe the Oct. 26 fresh election. Long-term observers rejoined the core team on Oct. 4 and have been deployed to various locations in the country to observe critical pre- and post-election processes.

The Center has issued several public statements throughout the process regarding its observation and findings, including a pre-election statement on July 27, a preliminary statement about the Aug. 8 election on Aug. 10, another statement regarding the tabulation process on Aug. 17, and two statements on the Supreme Court ruling and its implementation on Sept. 1 and Oct. 4. These public statements are available at cartercenter.org.

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COMMUNIQUE FOLLOWING THE MEETING OF THE HEADS OF INTERNATIONAL ELECTION OBSERVATION MISSION TO THE FRESH PRESIDENTIAL ELECTIONS IN KENYA

Nairobi – Oct. 27, 2017

We the Heads of the undersigned international observer missions present in Kenya issue this communiqué on the election rescheduled for the 28th of October.

We note the decision of the Independent Electoral and Boundaries Commission (IEBC) to postpone polling in Homa Bay, Kisumu, Migori and Siaya counties, based on article 55b of the electoral law.

We recognise that all citizens have the right to vote or not to vote. We appreciate that the Constitution of Kenya guarantees the right to peaceful demonstration. Citizens have a responsibility to uphold the law whilst exercising their rights. We therefore urge all Kenyans to refrain from unlawful acts and respect the rights of fellow citizens, including polling staff, independent observers, and others who have a responsibility in the election process.

It is imperative that the security forces provide protection to all citizens and avoid the excessive use of force. We call for full accountability of the security agencies for all actions taken that result in injury and loss of life.

We stand with the people of Kenya in their desire for a peaceful and united Kenya.

1. African Union Election Observation Mission - His Excellency, Thabo Mbeki, Former South African President
2. Commonwealth Observation Mission – His Excellency, Rupiah Banda, Former Zambian President
3. East African Community Election Observation Mission – Prof. Edward B. Rugumayo, Former Speaker of the Ugandan Parliament
4. European Union Election Observation Mission – Marietje Schaake, Dutch Member of the European Parliament
5. Intergovernmental Authority on Development Election Observation Mission - Amb. Tewolde Gebremeskel, IGAD Director of Peace and Security Division
6. National Democratic Institute Election Observation Mission – Pat Merloe, Senior Associate and Director of Electoral Programs- NDI; and Keith Jennings Senior Associate and Regional Director for East and Southern Africa- NDI
7. The Carter Center Election Observation Mission – Don Bisson, Field Office Director- Kenya

Carter Center Calls for Dialogue and National Reconciliation to End Kenya's Protracted Political Impasse

FOR IMMEDIATE RELEASE

Nov. 7, 2017

Contact: In Atlanta, Soyia Ellison, soyia.ellison@cartercenter.org
In Nairobi, Don Bisson, don.bisson@cartercenter.org

NAIROBI — In a [statement](#) about Kenya's Oct. 26 election released today, The Carter Center urged Kenya's political leaders to engage in constructive dialogue to bridge the gap between the opposition and ruling parties, and their respective supporters, following a tense electoral period.

Kenya's fresh presidential election, scheduled following the Supreme Court's annulment of the Aug. 8 race, unfolded in a context of heightened tensions stemming from the protracted electoral process, confrontational tactics and harsh verbal attacks by key political leaders, and outbursts of violence around election day. These problems severely undermined the ability of Kenya's electoral and judicial institutions to implement the fresh presidential elections. Rather than consolidating support for a national political program, the election polarized the country and exposed the deep tribal and ethnic rifts that have longed characterized its politics.

Regrettably, the actions of Kenya's political leaders served to weaken its democratic and independent institutions, constrain the ability of citizens to participate in the civic affairs of their country, and damage the nation's democratic development. In the days ahead, it is incumbent on political leaders to put personal agendas aside and take steps to heal the country while maintaining the country's constitutional order.

Today's statement provides an initial summary analysis of political and electoral developments between the Aug. 8 elections and the fresh election held on Oct. 26, based on the reporting of the Center's core team of experts and long-term observers who were on the ground for the Oct. 26 poll. We note that the electoral process is not yet complete,

as electoral disputes are pending in the Supreme Court. The Carter Center will release a comprehensive statement on the overall election process after its completion. A detailed final report will be published in early 2018.

[Read the full statement >](#)

Background:

The Carter Center has had a core team of experts in Kenya since April, monitoring key parts of the electoral process, including voter registration, campaigning, electoral preparations, and the recent resolution of disputes in the courts. That team was joined by a large group of observers who helped monitor voting, counting, and tallying in the days surrounding the Aug. 8 election. Following the Sept. 1 decision by the Supreme Court to annul the August election, the Center was invited by the IEBC to extend its presence to observe the Oct. 26 fresh election. Long-term observers rejoined the core team on Oct. 4 and were deployed to various locations in the country to observe critical pre- and post-election processes.

Because of insecurity surrounding the polls, the uncertain political environment, and the lack of a fully competitive election, the Carter Center deployed a limited election observation mission to assess the Oct. 26 polls. The team was limited in size and geographic scope. Given these factors, the Center did not conduct a robust assessment of polling station level processes on election day.

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Carter Center Urges National Dialogue After Supreme Court Upholds Results of Oct. 26 Fresh Presidential Election

FOR IMMEDIATE RELEASE

Nov. 20, 2017

Contact: In Atlanta, Deanna.Congileo@cartercenter.org,
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NAIROBI — The Carter Center urges all parties to respect today's unanimous decision by Kenya's Supreme Court to uphold the results of the Oct. 26 fresh presidential election and calls on political leaders to initiate a process of sustained national dialogue to heal the wounds aggravated by the often tense and tumultuous electoral period.

The court consolidated two petitions filed challenging the conduct of the fresh presidential election. It heard oral arguments from all interested parties in an open and transparent manner that afforded due process to all litigants. The court dismissed the petitions, finding that they were without merit, and will issue a detailed opinion within 21 days. The petitions raised several issues related to the Oct. 26 election, including a failure to conduct fresh candidate nominations, the impact on the process of the withdrawal of the National Super Alliance candidate, and a failure to conduct peaceful polls in all of Kenya's 290 constituencies.

The events surrounding the Aug. 8 general election and the re-run in the Oct. 26 fresh presidential election undermined the rule of law in Kenya and the country's democratic institutions. The extended electoral period was characterized by strident political rhetoric and harsh attacks by political leaders on Kenya's judiciary and the Independent Electoral and Boundaries Commission (IEBC), and election-related violence that resulted in numerous deaths, injuries, and damage to property. In resilient democracies, elections are centered on peaceful competition and the orderly transfer of power, not weakening democratic institutions and life-and-death clashes.

The Carter Center takes note of the violence during demonstrations in the last few days that resulted in several deaths and the destruction of property. We urge the government, especially the security forces, and demonstrators to exercise restraint in the coming days. We remind the Kenyan government of its obligation to protect the constitutional rights of peaceful assembly, free speech, and security of the person, to enable inclusive participation in the country's political and dialogue processes.

While the 2017 elections represent a clear setback for democratic processes in Kenya, going forward it is incumbent on political leaders and their supporters to seek common ground. President Uhuru Kenyatta, who has a fresh mandate to lead all Kenyans, should reinstate the national dialogue that culminated in the 2010 constitution. A renewed dialogue should result in additional measures to address the ethnic and tribal rifts that have long characterized Kenya's politics, while ensuring the protection and fulfillment of the rights of all Kenyans.

Background:

The Carter Center has had a core team of experts in Kenya since April, monitoring key parts of the electoral process, including voter registration, campaigning, electoral preparations, and the recent resolution of disputes in the courts. That team was joined by a large group of observers who helped monitor voting, counting, and tallying in the days surrounding the Aug. 8 election. Following the Sept. 1 decision by the Supreme Court to annul the August election, the Center was invited by the IEBC to extend its presence to observe the Oct. 26 fresh election.

Because of insecurity surrounding the polls, the uncertain political environment, and the lack of a fully competitive election, the Carter Center deployed a limited election observation mission to assess the Oct. 26 polls. The team was limited in size and geographic scope, and long-term observers were deployed to specific pre- and post-election processes. Given these factors, the Center did not conduct a robust assessment of polling station level processes on election day.

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Carter Center Presents Final Report on Kenya's 2017 Elections

FOR IMMEDIATE RELEASE

March 7, 2018

Contact: In Atlanta, Soya Ellison, soya.ellison@cartercenter.org

NAIROBI — The Carter Center released its [final election report today](#), presenting its comprehensive findings from Kenya's 2017 electoral period and offering recommendations to help strengthen Kenya's future electoral processes.

The report urges political stakeholders to act as quickly as possible to organize national stocktaking exercises and to develop and implement key electoral reforms well in advance of the 2022 election. The process should be guided by principles of inclusion and shared values grounded in the country's constitution.

The Center's report concludes that Kenya's 2017 general electoral process was marred by incidents of unrest and violence throughout the extended electoral period, and by harsh attacks by top political leaders on electoral and judicial authorities that seriously undermined the independence of the country's democratic institutions and the rule of law. Regrettably, the 2017 elections represent a major setback in Kenya's democratic development, leaving the country polarized and deeply divided.

President Uhuru Kenyatta was announced the winner of the Aug. 8 presidential election, however the process was annulled by the Supreme Court because of a lack of transparency in the tallying and results transmission process. Although the Independent Electoral and Boundaries Commission instituted several key improvements for the Oct. 26 rerun election, the leading opposition candidate, Raila Odinga, boycotted the polls, which were marred by violence, especially in opposition-learning areas. Turnout dropped by half. The Supreme Court reviewed several petitions challenging the rerun

result, and found them without merit, upholding President Kenyatta's Oct. 26 election. President Kenyatta was inaugurated on Nov. 28.

The Center's final election report is based on the reporting of Carter Center experts and long-term observers on the ground from April through November 2017. The Carter Center team monitored key parts of the electoral process, including the party primaries and candidate nominations, voter verification, campaigning, electoral preparations, and electoral dispute resolution. The core team of experts was joined by a large group of short-term observers to monitor voting, counting, and tallying in the days surrounding the Aug. 8 election. Because the Oct. 26 rerun election was marked by increased insecurity, an uncertain political environment, and an opposition boycott, the Center deployed a smaller limited observation mission, which did not cover all areas of the country.

Final Report

[2017 Kenya General and Presidential Elections \(PDF\)](#)

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■ 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 not-for-profit, nongovernmental organization, the Center has helped to improve life for people in

80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. Please visit www.cartercenter.org to learn more about The Carter Center.



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