

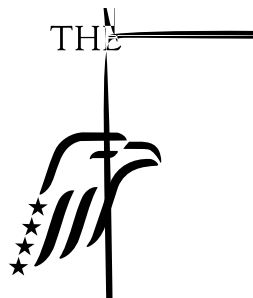
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CARTER CENTER



Observing Kenya's March 2013 National Elections

Final Report

The Carter Center strives to relieve suffering by advancing peace and health worldwide; it seeks to prevent and resolve conflicts, enhance freedom and democracy, and protect and promote human rights worldwide.



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

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

The Carter Center mission to observe the March

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provocative actions to national and international subregional intergovernmental organizations. We
acclaim and is a leading member of the parliamentary were also especially encouraged by the cooperation
opposition. and excellent work of an important new domestic
The Carter Center is pleased to have been invited consortium of Kenyan civil society organizations, the
and allowed to monitor, analyze, and report on the Elections Observation Group, that deployed more
electoral process, freely and independently with than 7,000 citizens in all 290 voting constituencies
unconstrained access. We were the only international EUCO (EU Election Observation Group) and
nongovernmental observer group, and we benefited from consultations and sharing information with
intergovernmental observer groups, including the African Union, the European Union, and several
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On March 4, 2013, the Republic of Kenya held its fifth elections since the re-establishment of multiparty politics in 1991. The country has a longstanding history of democratic governance and has a long history of peaceful transitions of power. The new constitution adopted by referendum in



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The Coalition for Reform and Democracy won 23



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county level of administration. Kenyan voters cast six ballots on March 4, 2013, for president, National Assembly, Senate, county governors, county assembly representatives, and women's representatives.

Although it may be several electoral cycles before the specific effects of the electoral system become apparent, the overall framework creates more opportunities for Kenyans to seek elected office and participate in public affairs. The Center hopes that reforms in democratic governance and public service delivery and accountability will continue.

Election Management

Continue to invest in the capacities and independence of the election commission. The Independent Electoral and Boundaries Commission faced more scrutiny in the 2013 elections than any other Kenyan political institution.

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

Voter Registration

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

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

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

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

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

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

Voter Education

Deepen commitment to voter education.

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





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Paul Karuki Mumene



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

Voting

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

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

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

Technology

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

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in areas where electricity is not widely available.

Long queues of voters are apparent in many elections, and Kenya's elections were no exception.

Although such queues are generally cited as signs of the enthusiasm and patience of voters, they also may be an indicator of problems that should be addressed.

In some cases, it was evident that far too many voters were assigned to some polling stations. The IEBC should review its distribution of polling locations, the number of those stations, and the number of voters assigned to them. The number of voters per polling station should be reduced to 500 maximum, and the number of streams should be reduced at any one location.

Alternatively, more locations should be created to avoid long queues and long waiting times to vote.

Change may also require a survey of the types of locations that served as polling stations, the number of entry and exit points, queue management by election officials outside polling

stations, and the visible display of clear information to direct voters to the appropriate polling station.

Tabulation and Results

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

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

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

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

Carter Center observers enjoyed appropriate access to the tabulation process at the county and constituency levels where crucial

steps in the tally process occurred and where many elective positions were declared. But access to the national tally center was inadequate and limited to the galleries, too far removed to have meaningful access to the receipt and processing of tally forms. Election agents were similarly excluded. The

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

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





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

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

Dispute Resolution

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

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

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

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



Election Observation Methodology

Since 1989, The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya⁵ The Center is among 40 intergovernmental and international nongovernmental organizations that have endorsed the Declaration of Principles

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

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

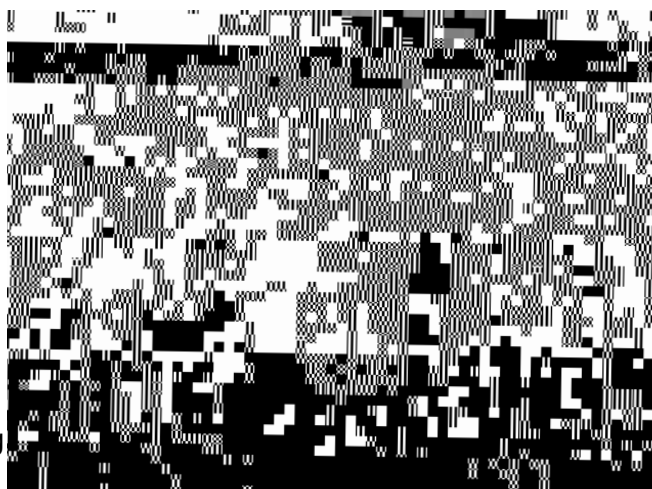


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Deployment of Long-Term International Election Observers

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

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



The Carter Center

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

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

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

Deployment of Short-Term International Election Observers and Delegation Leadership

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

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



The Carter Center

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





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

Politics of Land

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

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

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

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

Election Crisis of 2007

President Kibaki came to be challenged by many of his 2002 allies, and he sought re-election in what became a highly controversial election in 2007.

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

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



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

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

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

Politics of Secession

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

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

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

The Waki Commission

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

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

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

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

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

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

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

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

Government Inquiry and the International Criminal Court

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

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

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



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

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

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

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

Legal Framework for Elections

A sound, legal, electoral framework is essential for the effective administration of democratic elections that adhere to national and international rights.



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and men, including the right to equal political, social, economic, and cultural opportunity.

Subarticle 7 requires the state to put in place legislative measures for affirmative action to redress the gender discrimination.

Article 81(b) provides that “not more than two-thirds of the members of elective public bodies shall be of the same gender.”

Article 91 (f) requires that political parties “respect and promote human rights and fundamental freedoms, and gender equality and equity.”

Article 100 requires Parliament to “enact legislation to promote the representation in Parliament of (a) women; (b) people with disabilities; (c) youth; (d) ethnic and other minorities; and (e) marginalized communities.”

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

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

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

Campaign Finance

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

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

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

Presidential Election Funding

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



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s 30 percent below population quota for other areas = 93,196.6 inhabitants

s 40 percent below population quota for sparsely populated areas = 79,882.8 inhabitants

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

Summary Findings

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

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

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

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

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

the specific reforms provided Kenya fulfilled its 73% quota a step and 2017 specific legislation to implement Kenya's 1.273 TD-



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Paul Kariuki Mumene



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

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

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

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

- s Promote the desired participation of voters in the electoral process

- s Introduce emergent technologies in the conduct of elections such as biometric voter registration and electronic tallying of results

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

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

Summary Findings

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



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

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

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

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

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

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

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

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

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

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

Primaries Dispute Resolution Mechanism

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

Table 2

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



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Table 3

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

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

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

petitions were delayed until after the elections.

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

Political Parties, Coalitions, and Candidates

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

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

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

Criteria to Stand for Elections

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

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

Participation of Women

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

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

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

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

One presidential candidate out of eight was a woman.

152 women were nominated among 2,089 candidates for the 290 directly elected National Assembly seats.

16 women were nominated among the 244 candidates for the 47 directly elected Senate seats.

Seven women were nominated among the 237 candidates running for the 47 positions of county governor.

697 women were nominated among the 9,603 candidates for 1,450 county assembly seats.

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

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

43 CEDAW Committee, General Recommendation 23, para. 22

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Raila Odinga

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

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

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

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

Campaign Environment

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

in campaign activities, is an international obligation and a fundamental electoral right. Equal treatment of candidates and parties during an election as well as the maintenance of an open and transparent campaign environment is important to protecting the integrity of the democratic election process.

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

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

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

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

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



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

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

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

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The absence of campaign finance regulation, especially in the presidential race, was exacerbated by the absence of a fully enforced campaign period that penalized candidates and parties who lacked the resources to run a long and expensive pre-campaign.

Disparities in financial resources continued to prevent a level playing field through the end of the campaign. While the wealthiest candidates were campaigning using helicopters, others struggled to afford nationwide transportation, billboards, media space, and televised advertising.

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

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

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

Participation of Women, Minorities, and Marginalized Groups

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

The diversity of ethnic groups in Kenya highlights

in particular the importance of these rights, and the constitution not only enshrines these rights but directs the state to take active measures to promote the participation of all Kenyans.⁵⁰ Kenya's electoral system provided for a limited number of reserved seats for the representation of youth and people with disabilities in the National Assembly, Senate, and county assemblies.

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

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

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

50 U.N., ICERD, Art. 1

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



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

In spite of numerous dispositions aimed at ensuring better representation of women in public office, The Carter Center found the promotion of women's repre-

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Civil Society

All people have the right to participate in the public affairs of their country.⁹⁵ Not only does this right include the right to vote and to be elected, it also includes the right of citizens to participate in nongovernmental organizations and the ability to participate in domestic (or citizen) election observation groups. In the conduct of this activity, citizens and civil society organizations must also be able to enjoy their other rights and freedoms such as freedom of opinion and expression, movement, association, and assembly; access to information; equality and absence of discrimination; and the right to an effective remedy.

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

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



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

Voting Materials

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

- s An electronic and a hard copy of the principal register of voters (or the part containing the names of the voters entitled to vote at that particular polling station)
- s Six transparent color-coded ballot boxes that identified the respective elective positions
- s Sufficient ballot papers color-coded to correspond with those of the respective ballot boxes for each elective position
- s Stamp for the official mark of the IEBC on ballot papers
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centers were established, often as a single polling station with many "streams." Centers that registered more than 800 voters divided them into equal streams, with no stream to exceed 1,000 registered voters. These arrangements were necessitated by the



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

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

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

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

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

is democratic and reflects the will of the voters.

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

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

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

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

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

Closing and Counting

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

60 AU, ACHPR, Art. 17(1); UNHRC General Comment 25, para. 20; U.N. Convention Against Corruption, Art. 18(19)



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

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

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

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

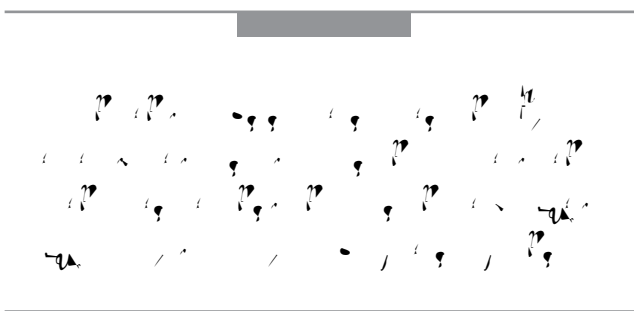
Summary Findings

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

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

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

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



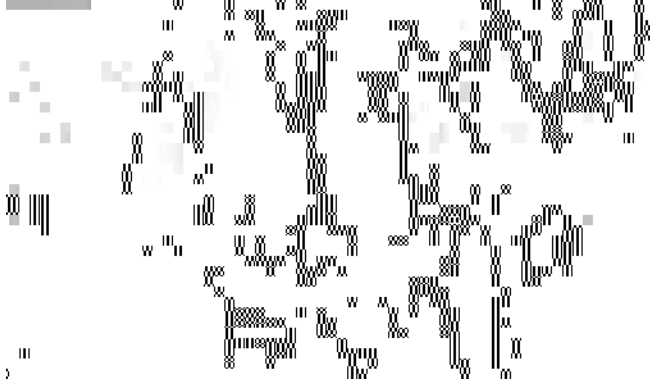
Paul Kariuki Murene



Agents representing various parties observe the voting process.

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Paul Kariuki Mumeni



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

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

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

Voter education; the internal design and layout of polling stations; the training of election officials and the procedures for checking voter identity; the number and complexity of ballot papers; and other issues all contribute to the successful provision of the best quality of election that all voters deserve.

These issues and potential solutions are well-known to the IEBC and others in Kenya and should be given consideration.



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

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

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

County Tally Center

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

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

National Tally Center

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

Challenges in Tabulation

Failure of Electronic Transmission of Provisional Results

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

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



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

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

On the evening of March 5, the IEBC stopped the electronic tally of provisional results entirely after the server receiving them proved unable to compile incoming data. In a televised press conference, IEBC Chairman Ahmed Issack Hassan explained to the public that the paper record of tabulation (various numbered tally forms) was the only legal base for final results; therefore, electronic display of provisional

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

Inadequate Publication of Tabulation Procedures

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

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

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

Inadequate Observer and Election Agent Access to National Tally Center

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

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

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

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

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

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



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

Discrepancies Between the Published Voter Register and Announced Results

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

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

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

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

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

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

Nonpublication of Detailed Election Results

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

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

66 Elections Act, 2011

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

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

Presidential and Legislative Elections Results

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

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

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

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

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

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

In both the Senate and National Assembly, Kenyatta's Jubilee Alliance secured the majority of seats and marshaled their numbers to win the coveted speaker's position of both houses. In the National Assembly, Jubilee commands a majority of 195 seats



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

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



Electoral Dispute Resolution

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

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

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

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

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

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

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

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

72 Constitution, Art. 159

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

Carter Center observers noted the renewed public trust enjoyed by the judiciary and the role it has taken in solving disputes arising from candidate nomination. However, the high number of cases submitted to the courts during the pre-election period interfered with IEBC preparations and threatened to delay the elections in some constituencies where unsuccessful primary candidates were reinstated in their right to stand through court decisions. The high number of petitions filed regarding disputed party primaries, IEBC tender and procurement procedures (e.g. court challenges to the awarding of the contract

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

After another two days of deliberation, the Supreme Court gave a unanimous decision of rejection of all petitions and confirmed the results of the presidential election on the last day of the constitutional time frame, March 30. The written judgment of the Supreme Court was available two weeks later. The results of the election were found to be valid, and the swearing-in of the president-elect was conducted on April 9, administered by the chief registrar and witnessed by the chief justice as provided for under the Constitution of Kenya⁷⁶

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

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

Summary Findings

Kenya's judicial institutions and framework for managing electoral disputes met the country's obligations to provide citizens with the right to appeal in a timely and public fashion. The presidential election petition proceedings were held in a very professional and rigorous manner. The lawyers representing petitioners avoided making personal accusations, and the Supreme Court judges kept the hearings in line with the highest standards of professionalism

and integrity necessary for the conduct of electoral

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



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

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

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

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

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

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

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

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

Postelection Violence and Fear of Escalation

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

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

78 27 percent: 6 incidents

79 41 percent: 9 incidents







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

Electoral System

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

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

Election Management

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

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

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

Voter Registration

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

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

Voter Education

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

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

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

Candidates, Parties, and Campaigns

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

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

Voting, Closing, and Counting

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

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

implementation. In particular, the cumulative difficulties in tender and procurement of biometric voter registration equipment and the electronic voter identification devices to confirm a voter's identity at the polling station were reflected in the high rate of equipment failure, observed by the Center and other groups at a rate of approximately 50 percent failure.

While there are important lessons for the IEBC in this aspect of voting procedures, of equal note was the relatively successful adaptation of polling station officials to the situation and their reversion to their polling station's segsIO welarty atoatioyparency.

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polling locations, the number of those stations, and the number of voters assigned to them. A resolution receipt and processing of tally forms. Election agents were similarly excluded.

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

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

Tabulation and Results

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

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

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

arrival at the national tally center was also a positive measure. However, the public display of electronic provisional results at the time of their arrival at the national tally center was also a positive measure. However, the public display of electronic provisional results at the time of their arrival at the national tally center was also a positive measure. However, the public display of electronic provisional results at the time of their arrival at the national tally center was also a positive measure.

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

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



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s The IEBC should refrain from using the “green book” to identify voters for any election as this manual register has not been stripped of its double entries and is a manual list of voters without the biometric data that provides the level of security set by the IEBC and requested by the Kenyan people.

s Measures should be implemented to improve registration in all regions and population groups where registration rates were well below average.

IEBC Management

s The tender and procurement processes and/or management team should be reviewed and revised to ensure the independence of the IEBC and transparency and absence of corruption in contracting for supplies, equipment, and services.

s The principal technology applications acquired for the 2013 elections (notably, biometric voter registration, the electronic voter identification device, and the system for electronic transmission of provisional results) should be reviewed with specific attention to the integration of technology management and the IEBC's other critical processes such as political party liaison, public information, logistics, and security.

s The structural organization of the IEBC should be reviewed with special focus on decision making and the publication of decisions, rules, and procedures.

Voter Education

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

Voter Identification

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

do so only after a thorough assessment of lessons learned and a cost-benefit analysis that includes consideration of the high costs of the technology, staff training, and deployment of the equipment compared to the actual security provided to the voting system. If retained, the IEBC should

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

s Access for elections agents and accredited observers should be accommodated at the constituency, county, and national tally centers so that they can adequately monitor the receipt, handling, and compilation of results. This will help to ensure the security and transparency of results and assist in detecting incomplete, inaccurate, or otherwise problematic tabulation forms and/or when administrative decisions at a higher level change the results that have already been released at a lower level.

s The IEBC should publish final official results from the polling station level through each phase of tabulation. Where results may not reconcile, for example because one or more polling station result was excluded from the tally for administrative or other reasons, this should be explained. Any discrepancies between the total number of votes cast across the six different elected offices should be explained.

To the Political Parties

s Change the calendar for the candidate nomination primaries in order to prevent party-hopping while ensuring due process is respected without jeopardizing the electoral calendar.

s Take all appropriate measures to strengthen the participation of women aspirants and candidates.

To the Government and Elected Representatives

s Review the electoral law and overall legal framework to ensure that all provisions and deadlines create a workable electoral calendar for the IEBC to implement.

s The 47 special seats for women, though a welcome measure, did not meet Kenya's constitutional obligation to ensure at least one-third of all elected

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

s Introduce a political parties act that addresses the importance of equitable financial and other resources for political parties and candidates to create a more level playing field. Particular attention should be paid to campaign finance including possible public financing of parties, regulation of donations to parties, limits of campaign spending, and disclosure requirements.

s Based on an evaluation of the 2013 elections, assess whether or not modification of the electoral calendar is appropriate to either retain the conduct of all six elections on one day or whether separate election days are warranted.

s Establish and enforce a clearly defined campaign period.

To the Judiciary

s Continue the important reform process (e.g. strengthened vetting of magistrates) and establish clear performance targets to rebuild public confidence in the judiciary.

s Review the 2013 experience with electoral dispute resolution to generate a written record of best practice in electoral justice.

To the Security Forces

s Continue the initial improvements that have been implemented at the very top of the leadership hierarchy (e.g. public access and civilian review of key appointments) to re-instill the spirit of public service and accountability in the police force.

s Identify and address the challenges facing police in the conduct of their duties (e.g. conditions of work



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

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

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Democracy Program



Appendix D Statements



Jan. 18, 2013

Carter Center Announces Election Observation Mission to Kenya

At the invitation of the Independent Electoral and Boundaries Commission and the welcome of political parties, The Carter Center has launched an international election observation mission for Kenya's March 4, 2013, elections. the election commission, political parties, civil society organizations, and the international community, as well as other domestic and international election observation missions. Their deployment coincides with the formal nomination of candidates.

The early deployment of long-term observers will allow the Center to assess pre-election preparations. The Carter Center also will monitor closely legal and political developments that may impact the election. A field office has been established in Nairobi to guide these efforts. These observers will be joined by an additional 30 members shortly before the elections. The Center will release periodic public statements on electoral findings, available at www.cartercenter.org.

"The Carter Center hopes that this election observation mission will reassure the Kenyan people that the efforts to reform political institutions can succeed. Competitive and peaceful elections would be one more step in Kenya's transition away from politics of division and strife," said Carter Center Election Mission Field Representative Stephane Mondon. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct that was adopted at the United Nations in 2005 and has been endorsed by more than 40 election observation groups. Center assesses the electoral process based on Kenya's national legal framework and its obligations for democratic elections contained in regional and international agreements.

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



Observing Kenya's March 2013 National Elections

Feb. 21, 2013

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

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

The Center's observers report that Kenyans have been able to assemble freely and parties and candidates able to convey their messages to potential voters. The March 4 elections for president, Parliament, governors, and county assemblies will be the first held under the new constitution of August 2010. The legal frame-



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

Pre-election Statement

Feb. 21, 2013

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

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

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

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



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democratic elections contained in regional and international treaties.



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



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

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

Conflict resolution mechanisms

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

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

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

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

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

Campaign environment

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

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

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

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

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

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s Take special care to ensure the proper training of all polling station officials to manage a complex six-ballot polling experience for voters. Additional attention should be given to closing and counting procedures, which are often neglected and suffer in the wake of pressure to staff and deploy thousands of election workers.

s Ensure that sufficient election staff members are deployed to polling centers, especially the ones with the highest numbers of voters.

To the candidates and political parties:

s Continue to respect and reinforce the Code of Conduct and encourage fair practices among party supporters.

s Spread the message among supporters that the election results may take some time to be tabulated and announced by the IEBC. While party agents have the right to serve as an important check on polling station results they should also remember that the election unfolds across more than 33,000 polling stations, not just the one location where they are stationed.

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Observing Kenya's March 2013 National Elections

Feb. 27, 2013

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



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Observing Kenya's March 2013 National Elections

The Carter Center International Election Observation Mission to Kenya's March 4, 2013 Elections Statement of Preliminary Findings and Conclusions

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

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

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

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

Legal and Electoral Framework

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

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



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

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

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

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

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

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

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

Election Administration

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


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

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

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

³ UNHRC General Comment No.25, para. 20

⁴ Internal Electoral and Boundaries Commission Act, Art. 5



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

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



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

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

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

Voting Procedures

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

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

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

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



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locations, improved queue management with more polling staff, or other measures. In future elections, the IEBC should consider reducing the number of

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

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

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

Tabulation

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

tally center once counting was completed on election night. Media and the public also have direct access to this feed, an impressive commitment to transparency and providing an important means to get provisional results into the public domain quickly. Unfortunately this has not been the case and while a significant number of results (representing some 40 percent) were posted within 24 hours of the close of polls, the majority were not. The legal official results are on paper tally sheets from each polling station and these are to be transported securely to the 290 constituency tally centers, where once again they are to be available for scrutiny of party agents and results. Unfortunately, the results were not transmitted directly to the national tally center.



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

The Judiciary

Impunity within the justice system undermined the rule of law and underscored the need for urg

Observing Kenya's March 2013 National Elections

the election date. A number of cases relating to the procurement process of the IEBC and one against international observers also were filed and concluded before the elections.

increased the credibility of the judiciary's ability to settle electoral disputes with impartiality.

The Carter Center makes its assessment based on Kenya's legal framework and its obligations for

Of significance to note is the case on procurement of democratic elections contained in regional and inter-ballot papers filed and concluded a few days before the elections. This case presented a tense period for voters as its determination had significant impact on the IEBC meeting critical operational deadlines. A recent decision of the court was given in regards to the integrity of a presidential candidate and his running mate on Feb. 15, 2013. The efficiency with which the courts have dealt with matters coming before it has

democratic elections contained in regional and international treaties. The Center's observation mission was conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the IEBC Code of Conduct for Election Observers. The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.



Observing Kenya's March 2013 National Elections

April 4, 2013

The Carter Center Finds Kenya Election Results Reflect Will of Voters

The Carter Center finds that in spite of serious shortcomings in the Independent Electoral and Boundaries Commission's (IEBC) management of technology and tabulation of final election results, the paper-based procedure for counting and tallying presented enough guarantees to preserve the expression of the will of Kenyan voters.

The Center congratulates Uhuru Kenyatta on his election as the next president of Kenya, and praises outgoing Prime Minister Raila Odinga for taking his concerns with the conduct of the election to the Supreme Court and accepting their ruling, which upheld the final results announced by the IEBC on March 9. The presidential election petition proceedings conducted by the Supreme Court were held in a very professional and rigorous manner.

The Carter Center finds that several key areas related to the tabulation of results did not receive sufficient attention. The initial release of inaccurate figures transmitted by electronic means challenged citizen confidence in the IEBC. A lack of transparency in the national tally marred the final stages of the process. Party agents and observers were unable to observe these proceedings adequately, and the Center hopes that future tabulation processes will be organized in manner that allows for appropriate observer access.

While the IEBC met its constitutional obligation to publish final results within seven days of the March 4 election, the Center regrets the IEBC's continued unwillingness to publish results by polling station, thereby missing an additional opportunity for the public to confirm that their choice was accurately recorded and reported.

"These realities point to the need for continued citizen vigilance and government acceptance that a vibrant civil society is key for Kenya's democratic development," said Carter Center Vice President for Peace Programs Dr. John Stremlau.

The 2013 elections presented the Kenyan people with their first opportunity to exercise their rights under the new constitution, the Center reported.

Observing Kenya's March 2013 National Elections

The Carter Center International Election Observation Mission to Kenya

Post-election Statement on Tabulation and Announcement of Final Election Results April 4, 2013

Introduction

On March 9, Ahmed Issack Hassan, chairperson of the Independent Electoral and Boundaries Commission (IEBC), announced the results of the presidential election, declaring Uhuru Kenyatta of The National Alliance (TNA) elected with 50.07 percent of the valid votes, ahead of his main challenger, Raila Odinga of Orange Democratic Movement (ODM), who garnered 43.3 percent of valid ballots cast. The tabulation of final results for parliamentarian, senator, female representative to Parliament, county governor, and county assembly representative also had been completed at constituency and county level. The final turnout figures for the presidential election showed that over 86 percent of registered voters turned out to cast their vote.

The Center's observers visited 40 constituency and county tally centers. The Carter Center finds that several key areas relating to the tabulation of results did not receive sufficient attention from the IEBC. The release of inaccurate figures from the electronic transmission of results and lack of transparency of the national tally marred the final stages of the process, however, the Center notes that in spite of discrepancies in early numbers released to the public, the IEBC managed to secure final results within the constitutional period of seven days. The Center welcomes the publication of results forms 34 and 36 on the IEBC website, although most of them were not effectively accessible, and regrets the IEBC's continued



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take place at the constituency and county level for all elections, and then be transmitted to the national level for final tallying and compilation of results of the presidential election. Upon completion of counting



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future elections, the Center recommends that the IEBC ensure that regulations and procedures regarding transmission, receipt, and data processing are communicated to electoral stakeholders well in advance and guarantee full access to the national tally center as stated in subsidiary legislation and recommend by Kenya's international obligations and electoral good practices.⁵

Very brief descriptions of tabulation instructions were shared with Carter Center observers, but they appeared to be insufficient to guarantee the integrity and accuracy of numerical tabulation. Additionally, Carter Center observers did not have access to any written criteria for the placement on quarantine of mismatched results between forms 34 and 36 or other apparent errors on tabulation forms and the procedure put in place to troubleshoot them. The Center finds that while the tabulation process was open to observation at the constituency and county level, the national tally center did not provide enough transparency for observers or party agents to assess the overall integrity of tally of presidential results.

In spite of imprecise procedures, IEBC agents performed in an orderly manner and were able to compile results at the constituency and county level in due time. With more than 33,000 polling stations, an 86 percent turnout, and only a week to release the results, the potential for human error remained very high and led to discrepancies in the final results released by the IEBC.

Lack of Transparency and Tabulation of Results

One of Kenya's core obligations concerns promoting transparency in elections and other public processes. In order to ensure such transparency, accepted best

practice requires ballot tallies to be transmitted openly, and for the results to be published in a timely manner, including at the polling station level. To enable the public and other stakeholders to verify the accuracy of the results and to increase public confidence, it is important for the IEBC to publish the election results disaggregated by individual polling stations on its website. The Center remains concerned that several weeks after the elections detailed preliminary results disaggregated at the polling station level have not been published, as is widely recognized as a best practice to increase transparency.

The Carter Center commends the IEBC for setting up the national tally center in an accessible, centralized, and appropriate location. The IEBC allowed the press to set up on site and convened regular press conferences to update the public on the tabulation process. The public display of electronic provisional results at the time of their arrival at the national tally center was a positive measure toward transparency; however, as described above, the unreliability of the data displayed through the tabulation process undermined public trust in the IEBC. The dissemination of unchecked figures, especially the inaccurate number of rejected ballots, could have fueled a strong public reaction and damaged public trust in the ability of the IEBC to produce reliable election results.

Firsthand access to information is key in conducting credible and impartial observation, and The Carter Center regrets the IEBC decision to confine party agents and observers to the gallery of the national tally center, making effective observation impossible. In the absence of access to compiled documents and to IEBC personnel, the national tally of the presidential results forms was effectively rendered non-transparent

⁵ U.N., International Covenant on Civil and Political Rights, Art. 19(2)

⁶ U.N., United Nations Convention Against Corruption, Art. 13(a); AU, African Union Convention on Preventing and Combating Corruption, Art. 3(3)

⁷ CoE, Handbook for Observers of Elections, para. 4.6. EISA and Electoral Commissions Forum of SADC, PEMMO, p. 26

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for stakeholders and observers. In future elections, the Center strongly recommends that the IEBC design a tabulation process that accommodates both the security and transparency of results. This advance provision for transparency will be especially useful to the IEBC when incomplete, inaccurate, or otherwise problematic tabulation forms arise and/or when administrative decisions change the results that have already been released to the public at a lower level.

The Center also regrets the publication of provisional results while voting was still ongoing on March 5 in polling stations in Laisamis, Samburu, Kuresoi south, Nakuru east and west, Bahati, and Wagir.

Presidential and Legislative Results

On March 9, 2013, Uhuru Kenyatta was declared the fourth president-elect of Kenya by the chairman of the IEBC. Uhuru Kenyatta obtained 6,173,433 votes or 50.07 percent of the votes cast, reaching the required double threshold of 50 percent plus one vote and 25 percent of the votes in half of the counties in order to be elected in the first round of election. This margin was achieved with 8,418 votes, making it a very close victory. His closest contestant, Raila Odinga, received 5,340,546 votes or 43.31 percent of expressed votes, third place, Musalia Mudavadi obtained 3.93 percent, and the other five presidential candidates each received less than one percent. Based on a preliminary analysis of the announced results, it appears that compared to Uhuru Kenyatta, Raila Odinga suffered from lower rates of voter registration and slightly lower turnout in his strongholds.

At least nine out of 10 registered voters cast their votes in 17 counties, translating to a massive turnout that shaped the eventual results. Official results from each of the counties indicate clear voting patterns in favor of one of the two leading contenders. In Uhuru Kenyatta's stronghold of central Kenya, voter turnout

was 94 percent in Nyandarua and Muranga counties and 93 percent in Nyeri county. For Raila Odinga, Homa Bay, Siaya, and Migori counties achieved voter turnout between 92 and 93 percent.

These figures reflect the critical regional and ethnic support for the two main contenders in the elections. Out of the 17 counties that reported the 90 percent-plus voter turnout, 11 were in Uhuru Kenyatta's strongholds, which show that his Jubilee Alliance did well in rallying followers in its strongholds to get out and vote. In contrast, the counties with the lowest voter turnout in the country were in some of Odinga's Coalition for Reforms and Democracy (Cord) strongholds, notably, Kilifi (65 percent), Mombasa (66.6 percent), and Kwale (72 percent).

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

Only 193 women were candidates for parliamentary seats in the race outside of the reserved seats. Compared to the 12 elected members of the previous Parliament, 16 women got elected outside of the reserved seats resulting in the overall increase of women in Parliament, especially considering the augmentation of reserved seats for women in both chambers of Parliament from 10 to a total of 63 reserved seats. However, no women were elected as governor or senator, which shows that progress needs to be made in order to fulfill the condition that no more than two-thirds of elective public bodies' members should be of the same gender.



Observing Kenya's March 2013 National Elections

to provide equal opportunities for women and men inelected on the tickets of Agano, GNU and Farmers the political sphere. Of the seats reserved for women, parties. Cord is in control at the Kakamega county both Jubilee and Cord won 23 and Amani won one. assembly which, like Kiambu, has 59 wards. Out of In the Senate, the Jubilee Alliance has 23 compared these, 41 county representatives are from Cord affiliate to Cord's 19. parties while the other eighteen are from parties allied to the Amani coalition, UDF, and New-Ford Kenya.

In the new constitutional dispensation, Parliament's powers have been enhanced and most appointments by the executive branch have to get MPs' endorsement. Therefore, Parliament will be asked to approve cabinet nominees and diplomatic appointments. With (PDP) having four representatives and another Cord Jubilee having the upper hand in both houses, it will affiliate, the Federal Party of Kenya has one county find it easier to ensure proposals that require approval of the elected representatives are passed. representative.

County Results

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

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

ODM is in total control in Mombasa county with all the 30 county representatives elected on its ticket. The Jubilee Alliance is in control of the Nakuru county assembly with TNA and its principal ally, the United Republican Party (URP), having a total of 47 out of the 54 elected county representatives.

In Kiambu county, one of the biggest in the country with 59 wards, TNA enjoys a huge majority of 56 elected representatives with the remaining three

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

Discrepancies in the Voter Register and Released Numbers

The comparison of final results for the presidential election (recorded on Form 36), which served as the basis for the compilation of results, showed worrying discrepancies. First, in some cases the recorded number of ballots cast differed by several hundred to several thousand for the different elections in the same polling station. This resulted in turnout figures being different for each elective position in a given polling station where voters were supposed to cast all six ballots without exception. Second, the Center notes that the number of registered voters published with the presidential results released by the IEBC on March 9 differed from the voter statistics per county published by the IEBC on Feb. 24.

The Center also observed discrepancies between the provisional list of voters registered published on Dec. 18, 2012, and the voter statistics per county published

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by the IEBC on Feb. 24. While small adjustments would have been expected, a total variation of about 100,000 voters between the two documents suggests that their data have been moved in the register from one county to another without an explanation from the IEBC or the possibility of public scrutiny.

Additional discrepancies in the number of registered voters have emerged from the tabulation process. A significant number of registered voters recorded on Form 36 by returning officers in constituency tallies differed from those listed in the national voter register. While the number of voters recorded on forms 36 should have matched the voter register, it was very often not the case.

This lack of transparency in modifications to the national voting register that served as the basis for the organization of the elections is inconsistent with national and international standards for democratic elections¹⁰

These numerical discrepancies in such important elections, the first under a new legal framework by a new IEBC, call for more rigour in the tally operation and more guidance for IEBC personnel. However, the Center has analyzed these discrepancies for all 290 parliamentary constituencies and concluded that although they raise serious concerns regarding the accuracy of numbers released by the IEBC, the differences did not favor any particular presidential candidate and therefore do not indicate an effort at partisan manipulation.

Election Dispute Resolution

Effective dispute resolution mechanisms are an integral part of ensuring that the will of the people is upheld during an electoral process. With a renewed

public confidence in its capacity to be a fair arbitrator of political divisions, the judiciary has played an active role since the very beginning of the electoral process. The most important role has been played by the Supreme Court, led by Chief Justice Willy Mutunga. The Carter Center commends the court for having upheld the highest standards of transparency of its hearing by having retransmitted live the entirety of the pre-trial conference and public hearing of the presidential election litigation process. As a pioneer measure, the Center hopes it will be reproduced in other parts of the world to ensure transparency and reinforce trust in electoral dispute resolution mechanisms.

A petition against the results of the presidential election can be filed by any citizen of Kenya. Any ground can be the basis for a petition as long as it is deemed sufficient by the court and is not frivolous, vexatious, or scandalous. The deputy president-elect and the IEBC are automatically included as respondents to any petition against the results of presidential elections. The petition has to be submitted within seven days of the declaration of results and determined within 14 days after its filing. At the time of the filing, the petitioner must deposit a sum of 1,000,000 KSH as security for costs otherwise the petition will be dismissed. Article 83 of the electoral law gives extended powers to the courts in deciding on the outcome of the judicial process: "No election shall be declared to be void by reason of non compliance with any written law relating to that election if it appears that the election was conducted in accordance with the principles laid down in the Constitution or that the non compliance did not affect the result of the election." This article has clearly been written for the final results and is silent on non compliance effecting results of a first round election. The disposition makes

10 Art. 81 of the constitution requires transparency of the electoral system, General comments on Art. 25, para. 11

11 UDHR, Art. 21

12 Art. 140 of the constitution



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it more difficult to void a presidential election that respected very broad constitutional principles. The

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missing along with 75 Forms 36. The team did not report on discrepancies between numbers in forms 36 and 36, thereby considerably reducing the added value of the exercise.

The two day pre-trial conference started on March 25 and was followed by two days of hearings. After another two days of deliberation, the Supreme Court rejected all petitions and confirmed the results of the presidential election on the last day of the constitutional timeframe, March 30. The written judgment of the Supreme Court will not be available for two weeks.

Raila Odinga made an appearance on TV acknowledging the decision of the Supreme Court and affirming his support for the rule of law and constitutional order. While reaffirming his arguments, his speech appealed for the respect for the Supreme Court decision and wished good luck to president-elect Uhuru Kenyatta and his vice president-elect William Ruto. The Carter Center encourages Cord supporters to remain calm and to respect the appeal of Raila Odinga for peace and unity of the country.

The presidential election petition proceedings were held in a very professional and rigorous manner. The lawyers representing petitioners avoided making personal accusations and the Supreme Court judges kept the hearings in line with the highest standards of professionalism and integrity necessary for the conduct of electoral litigation. The overall conduct of the presidential election disputes was conducted in accordance with international standards of democratic elections.

The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya. The Carter Center's 60-member delegation was in Kenya at the invitation of the IEBC. The Center conducts election observation in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005. The Center assesses electoral processes based on states' obligations for democratic elections contained in their regional and international commitments and in their domestic legal framework.



Observing Kenya's March 2013 National Elections



For Immediate Release

March 3, 2013

Observer Groups Call for Peaceful Polls, Urge Kenyans to Await Results

Observer groups from the African Union, The Carter Center, the East African Community, Intergovernmental Authority on Development, Common Market for Eastern and Southern Africa, International Conference on the Great Lakes Region, the Commonwealth, and the European Union call on Kenya's political parties and candidates to abide by the Electoral Code of Conduct and to respect their commitment to nonviolent participation in the electoral process. The observers also trust that the government of Kenya and the security forces will secure all stakeholders in a transparent and impartial manner. The observer groups also call on all Kenyans to respect the right of fellow voters to choose their elected representatives free from fear of intimidation or violence. The observers hope that all political actors will abide by the rule of law and allow the Independent and Electoral Boundaries Commission to conduct the polling, counting and tabulation process. The observer groups urge anyone with a complaint about the electoral process to follow the established judicial procedures.

His Excellency
Joaquim Chissano
African Union
Mission Leader

His Excellency
Rupiah Banda
Carter Center
Co-Leader

H.E. Festus Mogae
Chair of Commonwealth
Observer Group

Hon. Abdulrahman
Kinana
East African Community
Chief of Mission

Amb. Simbi
Veke Mubako
Leader of
COMESA Mission

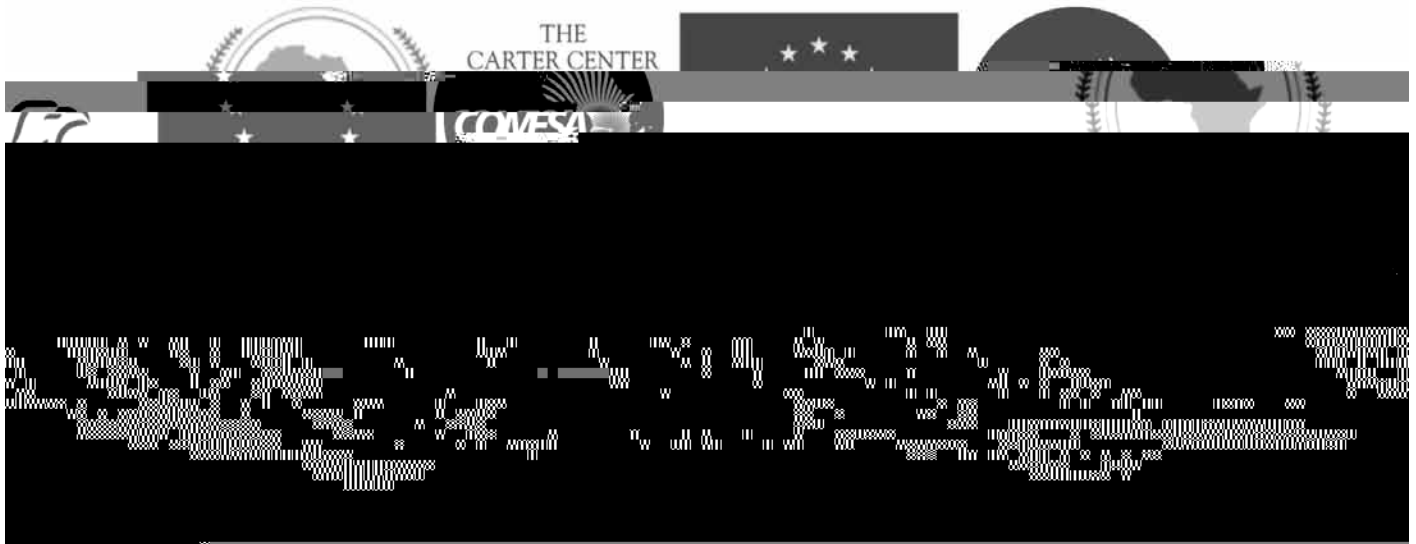
Amb. Dr. Berhane
Ghebray
Leader of IGAD
Mission

Mr. Alojz Peterle,
MEP
European Union
Chief Observer

Dr Aisha Abdullahi
Political Affairs
Commissioner
African Union
Deputy Mission
Leader

Dr. John Stremmlau
Carter Center
Co-Leader

Observing Kenya's March 2013 National Elections



For Immediate Release

Nairobi, 5 March 2013

The Observer Missions of the African Union, the Carter Center, the Commonwealth, the European Union, Common Market for Eastern and Southern Africa, Intergovernmental Authority on Development, East African Community, International Conference on the Great Lakes Region and Electoral Institute for Sustainable Democracy in Africa to the 2013 Kenya Elections headed by His Excellency Joaquim Chissano, His Excellency Rupiah Banda, His Excellency Festus Mogae, Mr. Alojz Peterle, Amb. Simbi Veke Mubako, Amb. Dr. Berhane Ghebray, Hon. Abdulrahman Kinana and Mr. Vincent Tohbi, respectively, have observed the voting and counting process across the country.

We are pleased that the voting and counting took place in a peaceful and transparent atmosphere and that the people of Kenya demonstrated strong commitment to their democratic process by turning out in significant numbers to cast their votes.

We call on all stakeholders of the Kenya electoral process to ensure that this peace and transparency continues to inform the remainder of the process. We further call on political party leaders to encourage their supporters to conduct themselves with the highest responsibility.

We urge all electoral stakeholders to respect the official election results that will be announced by the Independent Electoral and Boundaries Commission (IEBC) with calmness and in full respect of the Constitution of Kenya and the democratic process. In this regard, we appeal to all political parties and candidates that have concerns to follow the legal process laid down in the Constitution and the Electoral Code for the resolution of any disputes related to the electoral process. A special responsibility lies with the political leaders of Kenya to continue to abide by their pre-election commitments to peace.



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STO0402	Serban	Alina	Rift Valley/Eldoret
	Nkuuhe	Johnson	
STO0403	Polyuga	Oksana	Rift Valley/Eldoret
	Penar	Peter	
LTO5	Johansson Studsrød	Trude	Western/Kakamega
	Kamara	Shebora	
STO0501	Broadbent	Emma	Western/Kakamega
	Munyikwa	Hamadziripi	
STO0502	Ismail	Zahra	Western/Bungoma
	Iwinski	Krzysztof	
LTO6	Bryant	Roger	Nyanza/Kisumu
	Kamara	Mohammed	
STO0601	Callejas	Isabel	Nyanza/Kisii
	Ghodbane	Anis	
STO0602	Fletcher	Erika	Nyanza/Kisii
	Nothern	Steven	
LTO7	Luongo	Monica	Coast/Mombasa
	Maliba	Auguy	
STO0701	Theodory	Juliana	Coast/Kwale
	Barcott	Rye	
STO0702	McPeak	Georgia	Coast/Kilifi
	Molony	Thomas	

LTO: Long-term observer

STO: Short-term observer





Observing Kenya's March 2013 National Elections

Opening (Continued)





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Polling



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Closing



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Appendix G Letter of Invitation

(continues)



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Appendix H Election Statistics

General Statistics by County

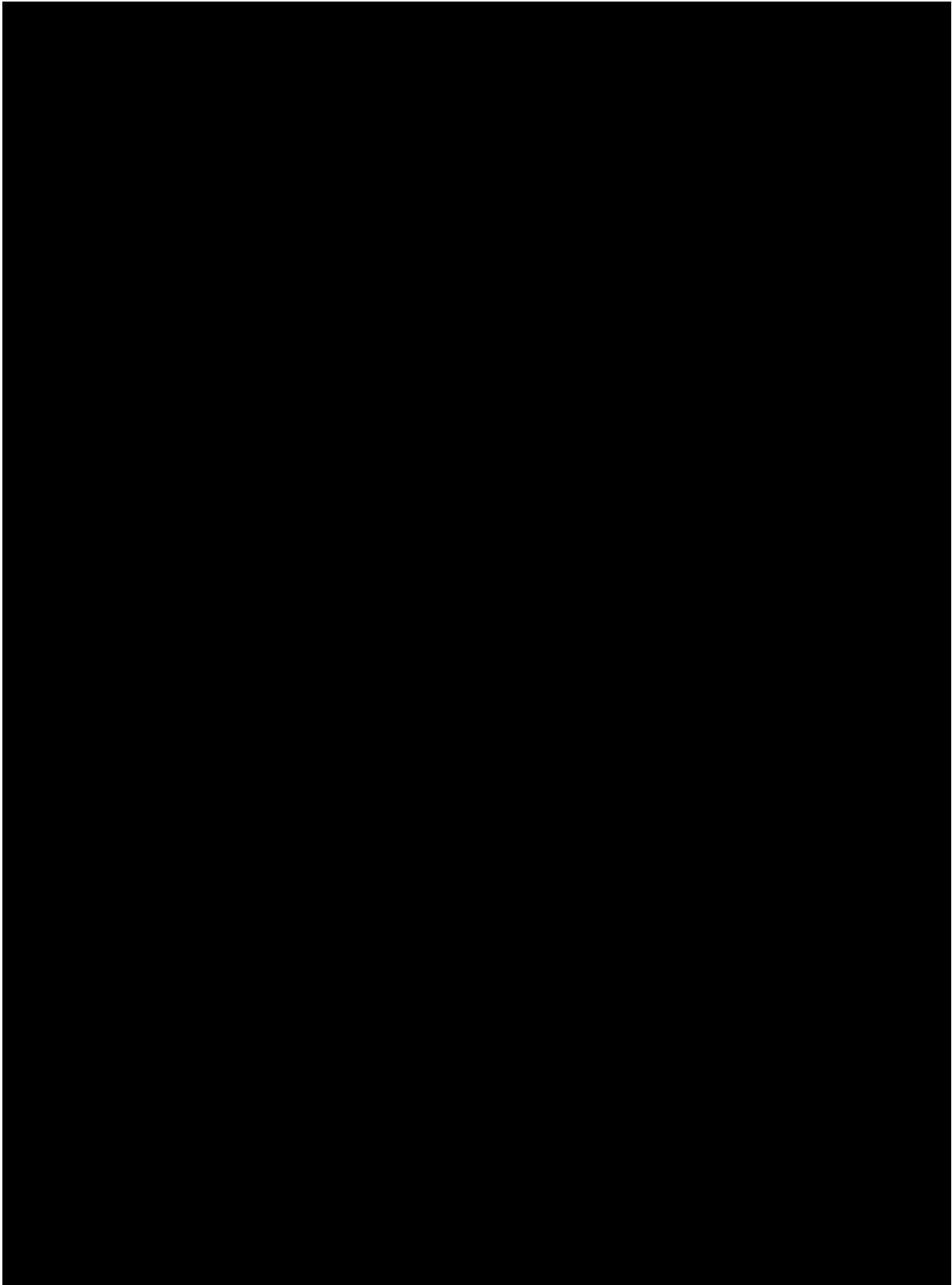


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- 7 Voter Registration: This constituent part includes all aspects of the electoral process related to the registrationitueet ar. s

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A Note on Sources Included

The Carter Center's Database of Obligations draws from many different sources of public international law, including treaties, interpretative documents (such as comments by the United Nations Human Rights Committee or the Inter-American Court of Human Rights), political commitments, and other sources that can provide additional evidence of state practice and emerging norms and standards. This hierarchy of sources is outlined in the table below, as well as additional information about each of these source levels.

Source Level	Definition of Source Level
Obligation	Obligations clearly codified in treaties.
Interpretation	Interpretation of treaty obligations by treaty monitoring mechanisms (such as the Human Rights Committee) or international courts (such as the European Court of Human Rights).
Political commitments	Nonbinding instruments such as declarations or other political commitments that serve as evidence of state practice and customary law.
Other sources	Handbooks, manuals, and other sources that can provide additional evidence of state practice (customary law) with regard to electoral processes.

The Carter Center at a Glance

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide. A nongovernmental organization, the Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. For more information visit www.cartercenter.org.



Martin Frank

