

Chapter 6

Conclusions and Recommendations

Conclusions

The 4 March 2013 elections were Kenya's first General Elections under the new Constitution and a series of new laws governing the elections, and represent an integral step in the reform and devolution process. Citizens have voted for the President, National Assembly, Women Members of the Assembly, Senate, County Governors and County Assemblies; three of which are brand new elective representative institutions. These elections were also the first General Elections since the tragic events following the 2007 polls, and so a major test for the country and its institutions.

The elections were regulated by an entirely new legal framework, including the 2010 Constitution and the 2011 Elections Act, IEBC Act and Political Parties Act and overall the new legal framework provides the basis for credible, inclusive and competitive elections. However, the outgoing parliament, which passed the new electoral legislation, did so in some cases quite late resulting in a contracting of the electoral calendar or with various amendments which were not helpful to the effective administration and management of the process

The elections were competitive, with freedom of association and participation rights provided for. However, the political party primaries were reportedly not well managed by the parties and were delayed virtually up to the deadline for nominations in order to minimise party hopping. This created unnecessary pressure on the IEBC and created challenges with regard to the ballot printing.

The provision of special seats for women in the National Assembly and reserved seats for women (as well as youth and persons with disabilities) in the Senate and County Assemblies, means the level of women's representation is improved compared to the previous parliament. However, it is regretted that the gender quota provided for in the new constitution is yet to be enforced.

There is a higher level of confidence and trust in the independence of the Judiciary following reforms and new appointments among judges at various levels. This is very positive in the context of the elections and more broadly.

The election campaign was largely peaceful. Given the background to these polls, the high level of competition between political contestants and the fact that politics in Kenya retains a strong ethnic dimension, the peaceful campaign was both highly welcomed and commended. This environment was facilitated in no small measure by the large peace rally in Nairobi attended by leading candidates, the positive and constructive tone of the

presidential debates, the numerous calls for peace from senior figures and a more responsible coverage by domestic media. Campaign rights were provided for and candidates enjoyed freedom of movement and assembly, though it is unfortunate that adequate legislation on campaign funding and expenditure was not in place for these polls in order to provide for a higher level of transparency and accountability in this regard.

The IEBC faced a challenging task in organising the elections, not least because in a short period of time it was tasked with conducting nationwide boundary delimitation, a brand new biometric voter registration and preparing for six polls on a single day for multiple institutions some of which are just being created; all in the context of a brand new legal framework. Throughout the preparation for the polls public confidence in the IEBC was reported to be high, which, given the loss of confidence in the previous electoral management body following the 2007 polls, is commendable, and overall the IEBC managed the pre-election preparations in a transparent and effective manner.

In such an environment and faced with late changes to the legislation the IEBC did struggle to contend with some shortcomings and truncated electoral deadlines. For instance, the IEBC's voter education campaign, which is critical given the new system and complexity of the voting process, was initiated relatively late in the process. Problems and delays with the procurement of materials for the biometric voter registration and the reduced period for voter registration both impacted on the process. But overall, while the inclusion rate on the list can probably be further improved for the future, the new register represents a major effort and generally provides for universal suffrage.

On the day of the election Commonwealth observers reported positively on the voting and counting processes in the majority of places visited. There was a very large turnout of 86 per cent and this created some crowd management challenges, but overall people waited peacefully for their turn to vote. There were, however, some violent incidents in the Mombasa area, which most unfortunately led to the tragic loss of several lives. We did observe problems in some instances with the electronic voter identification machines, but this was alleviated by the use of the printed copy of the register as provided for in the regulations.

The count at polling stations was conducted transparently, poll officials worked diligently and party agents were present to witness the outcome. These elections were for 1,882 elective positions and the results tabulation was reasonably well conducted but a number of problems occurred in the tallying of results for the presidential elections:

- First, the electronic transmission process failed and the IEBC had to resort to waiting for the physical delivery of official results by Returning Officers to Nairobi.
- Second, there was confusion over the presentation of the respective vote totals for each candidate and whether or not to include rejected ballots in the calculation of the total votes cast.
- Third, there was a system error during the initial reporting of rejected ballots and the

totals reported were being multiplied by eight; and it took the IEBC quite some time to identify and rectify the error, and

- Fourth, there was some tension between the IEBC and party agents at the National Tally Centre regarding access to the process.

The IEBC worked hard to tally the final presidential results, and the process was transparent with parties given a copy of result sheets and able to verify the results. However, the problems identified resulted in some confusion and tension among some stakeholders and represented an untidy end to a critical part of the process.

At the time of writing a final result for the presidential election had been announced and a winner declared. However, the second placed candidate had indicated his intention to avail himself of his constitutional right to contest the results with a petition to the Supreme Court.

Despite these concerns, and the various shortcomings identified, our overall conclusion is that the process for the 2013 General Elections in Kenya was credible and met many of the benchmarks for democratic elections to which Kenya is committed.

Recommendations

The electoral framework and election administration

- It is important that the electoral timelines are established in a manner that facilitates the timely and effective administration of the election. This includes, but is not limited to, providing an adequate period for voter registration which can be completed in good time prior to the polls; ensuring candidate nominations are finalised and confirmed in good time for the ballot printing; and, ensuring that voter education is conducted for a long enough period to ensure it is effective. Both parliament and the election management body have to work together in this regard to ensure the legislative process and election administration are in harmony.
- It is envisaged in the law that voter registration will be continuous, enabling the IEBC to build upon the strong platform provided by the new voter register compiled for these polls. It is apparent that some areas have lower registration rates than others, and so there is now an opportunity to rectify this.
- Further, if the IEBC intends to continue to utilise the biometric voter identification devices in polling stations then it must ensure that there is sufficient time to adequately test the system, train personnel in their use and ensure that the local resources are suitable for their use; notably with regard to suitable power or battery back-up.
- New legislation governing campaign financing and expenditure was not enacted for these polls, but it is required. It is hoped that the new parliament will consider this

and pass such legislation, thereby ensuring adequate transparency and accountability in this regard.

- It is important that the quota for gender balance in representation in the parliament, as envisaged in the Constitution, is enforced as soon as is feasible. Further, there remains a broader need to encourage and facilitate women's participation as candidates for future elections.
- During these elections, the calculation as to whether or not a particular candidate has secured a majority of all the votes cast has been defined as all of the valid votes cast plus all of the rejected ballots. It is important that this is clearly articulated for future elections to pre-empt any further uncertainty in this regard.

The election campaign and media

- The National Cohesion and Integration Commission, the Media Council of Kenya and the Communications Commission of Kenya should be adequately financed and equipped to efficiently and effectively fulfil their respective mandates.
- Adherence to guidelines for responsible and ethical coverage of elections should be maintained and strengthened in the period after the elections.
- The Group also recommends training programmes on how media can cover the newly-created elective institutions.

Voting, counting and results

- It is commendable that provisions are made for persons requiring assistance to vote. However it is not appropriate that party agents should be part of this process. The assistance should be limited to a person of their choice or an electoral official.
- In the event that Kenya has multiple elections on the same day, and thereby necessitating multiple ballots and ballot boxes, then it is important that the ballots and their respective boxes are more distinctly coloured to ensure easier differentiation by voters. Further voter education can also help in this regard.
- It is essential that if an electronic results transmission system is to be used again then the system must be adequately tested to ensure that it is reliable.
- At present the number of voters per polling centre requires that polling stations are sub-divided into streams. But the system of managing queues and directing people to their respective queue needs to be improved to ensure better management of crowds and less confusion for voters. Further, the streaming alphabetically by first name means that family members can be separated. It might be considered if this is a

reasonable and helpful practice or not.

- Electoral activities across the country must be adequately resourced to ensure inadequacies do not affect the process.