



Feb. 21, 2013

FOR IMMEDIATE RELEASE

**CONTACT: In Atlanta, Deborah Hakes 1 404-420-5124; In Nairobi, Stéphane Mondon
+254721662826**

Carter Center

The Carter Center is observing the elections at the invitation of the Independent Electoral and Boundaries Commission and will provide an impartial and independent assessment of the electoral process to be made available to Kenyan public and the international community through periodic public statements, available at www.cartercenter.org. The Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission is conducted in accordance with the Declaration of Principles of International Election Observation and Code of Conduct for International Election Observation adopted at the United Nations in 2005, and all its observers have signed the Independent Electoral and Boundaries Commission Code of Conduct for Election Observers. The Carter Center has observed 93 elections in 37 countries, including the 2002 elections in Kenya.

####

"Waging Peace. Fighting Disease. Building Hope."

A not-for-profit, nongovernmental organization, The Carter 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; improving mental health care; and teaching farmers in developing nations to increase crop production. 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.

mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the IEBC Code of Conduct for Election Observers.²

Introduction

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

Legal and electoral framework

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

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

allow the IEBC to complete voting operations in the 11 hours authorized for election day. Although all voters in the queue at closing time are to be allowed to vote, The Carter Center encourages voters not to wait for the last minute to arrive at the polls. Delayed poll closings also have their own knock-on effects, slowing the transmission and tabulation of results.

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

Preparedness of the judiciary

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

The Carter Center commends the judiciary for the decision to fast track all elections related matters presented to the courts and the establishment of a Chief Justice of the Judiciary Working Committee on Election Preparations, which has been tasked with developing strategies to manage elections disputes efficiently and effectively.

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

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

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

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

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

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

Enforcement of the Codes of Conduct will be a persistent challenge in the run up to the elections, especially if parties and candidates use the same rhetoric and behavior that have prevailed during party primaries. The strong legal powers given to the IEBC can serve as strong deterrent to behaviors that could arm the electoral process. The Center encourages the IEBC to use its entire legal arsenal to ensure a peaceful and genuine election.

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

Campaign environment

In addition to being open and transparent, a genuinely democratic election requires a campaign

absence of a fully defined official campaign period tends to penalize candidates and parties who lack the resources to run a long and expensive campaign.

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

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

Security

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

The Carter Center is also concerned about the recent violence in some parts of the country,

closing and counting procedures, which are often neglected and suffer in the wake of

