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KENYA'S 2013 ELECTIONS: AN EFFECTIVE ASSISTANCE MODEL?

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SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS

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KENYA'S 2013 ELECTIONS: AN EFFECTIVE ASSISTANCE MODEL?

TUESDAY, APRIL 16, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 o'clock p.m., in room 2172 Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The committee will come to order and good afternoon. Let me apologize first to our very distinguished witnesses for the lateness. We did have a series of votes. That's the only reason why we are late, but again, it infringes on your time, so thank you for your patience and to everyone who is here today.

Good afternoon. Today's hearing will examine U.S. actions to support the March 2013 elections in Kenya, a critically important African ally. The United States has devoted more than $35 million since 2010 alone to prepare for and manage this year's election process. After the massive violence following the closely contested December 2007 election, many precautions were taken to prevent a similar occurrence in 2013. And Election Day and post-election violence has been greatly reduced. However, an effort to use new technology did not work as well as hoped. There were questions about the effectiveness of this election which had promised to be a technological advancement. Given future important African elections, this hearing will look at what a responsible U.S. position toward African elections should look like in an era of constrained development aid budgets.

The tragic Election Day deaths of 19 people, although attributed mostly to Islamist separatist elements and not to specifically election-related causes, cannot be ignored and the perpetrators must be held to account. It is unacceptable that in the violence that followed the 2007 elections an estimated 1,200 Kenyans, and there are different estimates, some say 1,000, some say more, were killed and approximately 600,000 were displaced according to the media reports. Yet, no one thus far has been held accountable.

Kenya, this year, conducted its first election under the 2010 Constitution. In addition to voting for a president and members of the National Assembly, Kenya selected members of a new Senate, as well as governors and local assembly representatives in the 47

newly-created counties, each with a designated women's representative.

More technology was brought into polling places to better ensure accuracy of voting and vote tabulation. Unfortunately, reported malfunctions of some equipment in some polling stations at the national level where a server breakdown for a while stoked fears of vote rigging. If the court process had not been handled as well as it was, we might be looking at another wave of post-election violence.

Uhuru Kenyatta was elected President, as we know, with 6,173,433 votes to 5,340,546 votes for Mr. Odinga. And this was certified by the Kenyan Supreme Court which coincidentally today issued a further elaboration and made very clear that although there were some anomalies, this election was indeed properly conducted. Nevertheless, the violence was a possibility until Mr. Odinga gave a magnanimous concession speech following the first court ruling.

The amount of U.S. support for the Kenyan election was extraordinary. American and Kenyan civil society organizations were enabled, in order to conduct civic education, including ratio and television messages, and programs aimed at youth to encourage participation in the election process, as well as to discourage violence. Youth organizations were created nationwide to give young people an enduring voice in their country's political system. Several innovative approaches were created including a comic book called Shujazz with young characters involved in commenting on the Kenyan political process.

The three organizations presenting testimony today all played major and very important roles in the creative preparations for the 2013 Kenyan election. The International Republican Institute printed nearly 1.2 million sample ballots and 400,000 election posters for the IEBC and also distributed some 800,000 Shujazz posters. The National Democratic Institute conducted an important poll on voter attitudes heading into the election, covering such issues as whether the country was headed in the right direction, whether their lives will improve in the next 5 years, whether the election posed a security threat to them in their community, and whether they felt others were being encouraged to do harm to their ethnic group because of the elections. Of course, these organizations did so much more which will be elaborated on in their testimony.

The International Foundation for Electoral Systems advised Kenya's Electoral Commission on the process to conduct an election where there were 1,882 different configurations of the ballot, depending on the local races being run—an enormous undertaking. The cell phones necessary for reporting of vote totals from polling stations were so late in being procured, however, that IFES went ahead and purchased 1,200 to send into the field in time for Election Day.

Despite the extraordinary efforts by NGOs in preparing for the Kenyan election, we must be selective in what lessons we take from this experience. We will not be able to devote such resources to what will be several important elections yet to be held in 2013 in other countries.

The U.S. Government has pressed both the Governments of Mali and Madagascar to hold elections at the earliest possible date in order to normalize relations after coups replaced elected leaders. Zimbabwe, which recently held a constitutional referendum, is scheduled to hold a Presidential and legislative elections that many in that country hope will break the long cycle of repression of political opposition. There was a report in today's newspapers that the Zimbabwe leaders are looking for funds because they are short in terms of election monitoring-type funds. So they're making an appeal as well. The next election in Ethiopia will replace the late Prime Minister Meles and also will determine whether the political opposition will have more space to operate than in previous elections. I'll never forget Greg Simpkins and I traveled right after one of the marred elections. Even though the opposition made significant gains, people were literally gunned down in the streets of Addis, and we were there to raise those issues with Prime Minister Meles, but hopefully the next election will be really, truly free and fair.

These elections are important to U.S. foreign policy as was the election in Kenya. So how do we ensure that they are successful and truly represent the will of the voters if we can't devote the resources as we did in Kenya? What role do we have to play going forward? This is the question we put to today's witnesses whose organizations have broad experience with African elections and have a unique viewpoint that we hope will allow Congress and the administration to agree on funding for a policy that is fiscally sound while being politically effective. This hearing comes at a critical time since Congress is currently considering our budget for foreign affairs, so I'd like to yield to my friend and colleague, Ms. Bass, for any opening comments.

Ms. BASS. Thank you, once again, Mr. Chairman, for holding today's hearing on Kenya's recent election and what we can learn from this important period in the country's history, both politically as well as socially. Kenya is an important strategic partner to the United States and the most recent election provides an opportunity to not only better understand elections in this East African nation, but important lessons for the continent as a whole.

I want to also acknowledge and thank today's witnesses. Each of you in your organizations participated in the recent elections and you should be congratulated for your work, not only in Kenya, but across Africa to ensure free and fair elections are observed everywhere.

I want to make clear from the outset of this hearing that this committee turns its attention to the Kenyan elections because of its importance to the region and the continent. Kenya is said to be the economic engine of East Africa and enjoys a thriving private sector that drives growth and development. And as we address Kenya's election, we do so knowing very well that our own country faces many challenges to ensure that all citizens exercise their right to vote without fear of disenfranchisement and intimidation. The right to vote is at the heart of our democracy and is cherished among those we hold dear.

Kenya deserves praise for permitting the courts, rather than violence, to determine its bright future. In the aftermath of 2007,

Kenya endured a dark period that reminded us all of what's at stake. While there were pockets of violence, this by far was the exception rather than the rule. I believe the response following the March 4th election and court ruling made clear that Kenyans chose a future that adheres to peace and the rule of law.

In reviewing Mr. Sweeney's remarks for today's hearing, I found his framework for evaluation of the recent election to be both informative and useful, and if you don't mind I would like to paraphrase from your statement in phrasing how we might consider the recent elections. You wrote, "Did this most recent election reflect the will of the people? Were the investments made in the democratic process well spent? And did they allow important advances to take hold?"

In particular, I'd like to know what your thoughts are. Mr. Chairman gave several examples of some of the work of the NGOs in terms of the posters, the comic books, and all of that and I would like to know your opinions as to whether or not, from all three of you, as to whether or not you thought that really made a big impact.

I would like to add an additional question to this thoughtful and pragmatic list. Do the steps taken and investments made provide a model for elections in other countries throughout Africa? As we've seen in the last year, African nations with some significant exceptions have embraced democratic processes, the rule of law, and peaceful transitions. Whether through elections or constitutional means, countries like Senegal, Ghana, Sierra Leone, and Malawi illustrate a strong and I believe lasting shift toward democracy. I would add that we learn much from our success as we do from those things that did not go according to plan.

As we will hear from today's witnesses, our focus should cover the broad diversity of success and the obvious challenges, the activities that worked well, in addition to those that failed to accomplished its stated objective. As the Congressional Research Service notes, the Kenyan Constitution brought major changes to the government, established new checks and balances and a more deliberate separation of powers and evolving considerable powers to a new county level of government. And important changes were made to the administration of the elections, notably, the introduction of new technologies designed to enhance the transparency of the process and credibility of the results. Some of these reforms worked well and while others proved to be inefficient or ineffective and maybe you could comment specifically where you thought what was insufficient and what wasn't effective. Delays in voter registration and the problems with election equipment resulted in poorly coordinated voter programs. A lack of voter education, voter buying and intimidation concerned domestic and foreign observers alike. But these are the challenges of a relatively new democracy and a country, I believe, that is committed to improving and strengthening its institutions.

Kenya's new President must take heed of the many challenges that were experienced during this most recent election and move swiftly to show to all Kenyans that the new government is willing to build a culture of unity that is inclusive of the country's 50 eth-

nic groups. The challenge may be great, but the opportunity is even greater.

I firmly believe that Kenya's future has never been brighter and with the election now over, Kenyans proved that the rule of law prevailed over the stinging violence of '07. Thank you, and I look forward to hearing from today's witnesses and I yield to the chairman.

Mr. SMITH. Thank you, Ms. Bass. I'd like to now introduce our distinguished witnesses.

Beginning with Mr. Paul Fagan, who began his career at the International Republican Institute in 1995. He currently serves as the Regional Director for Africa where his duties include oversight of the programs in Kenya. He served as IRI's first East Africa Resident Regional Director based in Kenya and oversaw IRI's programs and Kenya's historic 2002 elections and also implemented IRI's first series of political party programs in Somaliland. He later served as Acting Deputy Director for Africa and then served on election observation missions in Afghanistan, Azerbaijan, Georgia, Kenya, Liberia, Nigeria, Somaliland, and the Ukraine.

We'll then hear from Dr. Keith Jennings, who is a Senior Associate and Regional Director for Southern and East Africa for NDI. Over the past 15 years, he has represented NDI in 30 countries working on a range of governance, civil society, political party, and election programs. He has managed several of NDI's largest programs, having served as the Institute's Country Director for Liberia, Mozambique, Nigeria, South African, and Zambia, among others. He is author of numerous popular and scholarly articles on a range of human rights and democratic development subjects. He has also been a frequent media commentator on foreign affairs.

And then we will hear from Mr. Bill Sweeney who serves as the President and CEO of the International Foundation for Electoral Systems or IFES. Prior to these positions, he also served on the board of directors and was chairman of that organization. He has a life-long background in democracy promotion and public policy with considerable experience in both the public and private sectors. He was deputy chairman of the Democratic National Committee and executive director of the Democratic Congressional Campaign Committee. He has also been an official election observer in the Philippines, Russia, Jamaica, and Nicaragua.

Mr. Fagan, if you could begin, and welcome to all three of you.

STATEMENT OF MR. PAUL FAGAN, REGIONAL DIRECTOR FOR AFRICA, INTERNATIONAL REPUBLICAN INSTITUTE

Mr. FAGAN. Chairman Smith, Ranking Member Bass, and members of the subcommittee, thank you for the opportunity to testify today along with my colleagues from NDI and IFES with whom we work closely with around the world. Since its independence 50 years ago, Kenya has been a strategic ally of the United States. IRI has been active in Kenya since 1992 and has worked to strengthen democratic institutions ever since. The recent March elections signaled many changes for the nation.

Mr. Chairman, I believe that it is important to talk about the challenges Kenya has faced leading up to these elections, examine the democratization process the country is undergoing and then

discuss ways in which the United States can continue to foster a strong relationship with its strongest ally in East Africa. Furthermore, the recently concluded general elections and the comprehensive approach of United States assistance should be examined as a possible model for future electoral assistance in Kenya and other African countries.

The flawed 2007 Kenyan elections and the senseless violence that followed signaled to the world that democratization is an ongoing process that can be derailed if it is not supported. After the international community stepped in to help broker peace in Kenya, it was clear that more was needed to preserve the progress made over the years. The result of the efforts occurred on March 4, 2013 when Kenyans overwhelmingly went to the polls. The number of voters was not only large, but the most ever, with more than 86 percent of registered voters participating in the election.

Five years on, and Kenyans have emerged from a dark chapter in their nation's history. While Kenyans today are largely optimistic about the future of their country, this optimism and the reforms of the past 5 years faced a crucial test on March 4. In the lead up to these elections, there were signs of progress as well as concern. A particular emphasis should be focused on the Independent Electoral and Boundaries Commission or the IEBC, the judiciary, the media, civil society and political parties. All of these institutions deserve credit for the role they play to ensure a peaceful process, but many Kenyans still have concerns about them.

The institution that still remains at the center of discussion is the IEBC, which organized a relatively good election. However, there were moments that could have derailed its efforts such as the delayed voter registration process, the failure of the electronic voter identification machines on voting day and many in the voting centers, and the flawed electronic submissions results process.

Kenyans had expected the Presidential results within 48 hours, but due to the flawed electronic results system, results were not shared until March 9, 5 days after the conclusion of the election.

The political parties need to continue to be reformed with a focus on party finance laws, inclusion of marginalized groups such as women and youth, and being run more transparently. Women, in particular, were supposed to be big winners in these elections, but they were not and the parties could have played a much more positive role in getting women elected.

Generally, the media contributed to a peaceful election by broadcasting accurate and balanced stories. News outlets reminded Kenyans to keep the peace and many articles were written about the need to avoid political violence. And civic and nongovernmental organizations played a significant and a central role in Kenya. In the lead up to elections, civic organizations were invaluable to the electoral process and it is important to maintain their ability to participate in the future.

Lastly, Kenya's judiciary was key to the success of these elections. It was front and center throughout the process. Reforms to the judiciary had gone and laid the groundwork for the type of competence witnessed during the Supreme Court hearing on Raila Odinga's petition. The court proceedings were made live on television allowing millions of Kenyans to tune in, watch the pro-

ceedings, and then decide for themselves how they feel about the process. These elections demonstrated that Kenyans can and will turn to their courts for justice.

It cannot be ignored that each of the sectors mentioned above, the IEBC, the political parties, the media, civil society, and the judiciary all benefitted tremendously from the international community. Kenyans and Kenyan institutions, of course, deserve the credit, but the donor community's role was significant. In particular, it was clear that the United States' electoral assistance, led by the United States Agency for International Development or USAID, was important when it came to team work and building synergies at all levels among implementers in Kenya. Kenya benefitted from this holistic approach and as such, no stone lay unturned in the efforts to support Kenyans in having a peaceful and successful election.

IRI, in particular, benefitted from USAID support, but we have to thank the National Endowment for Democracy for its continued support for IRI's programs there as well and its continued support for democracy in Kenya and around the world.

Overall, IRI remains optimistic about the progress made throughout the elections process. We recognize that more work needs to be done. However, there are obvious issues to reconcile regarding the future of the United States relations with Kenya. President Uhuru Kenyatta and Vice President William Ruto have been indicted by the ICC for claims that they incited violence immediately following the 2007 elections. It remains unclear how our Government will interact with Kenya moving forward. It's a difficult situation.

Mr. Chairman, Kenya has the ability to lead the way in Africa for key reforms that embolden marginalized groups and give all citizens the ability to freely and openly participate in their government. If this works, Kenya will be a success story in Africa and beyond. IRI is committed to continuing its efforts to promote democratic governance throughout Kenya by empowering local governments and providing them with the support they need to be successful. We believe that, in turn, the devolution process will be stronger and provide greater opportunities for all Kenyans. Thank you, Mr. Chairman.

[The prepared statement of Mr. Fagan follows:]

TESTIMONY OF PAUL FAGAN
REGIONAL DIRECTOR FOR AFRICA
INTERNATIONAL REPUBLICAN INSTITUTE
HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS, AND INTERNATIONAL ORGANIZATIONS
APRIL 16, 2013

Chairman Smith, Ranking Member Bass, and Members of the Subcommittee, thank you for the opportunity to testify today.

Since its independence 50 years ago, Kenya has been a strategic ally of the United States in Africa, and more recently, the United States and Kenya have been close partners in the fight against terrorism. The International Republican Institute (IRI) has been active in Kenya since 1992 and has worked to strengthen democratic institutions by building the capacity of elected officials and working to increase citizen participation throughout the country. The recent March elections signaled many changes for the nation, including a high voter turnout and commitment from the people of Kenya to hold peaceful and transparent elections. Mr. Chairman, I believe that it is important to talk about the challenges Kenya has faced in the lead up to these elections, examine the democratization process the country is undergoing and then discuss ways in which the United States can continue to foster a strong relationship with its strongest ally in East Africa. Furthermore, the just concluded general elections and the comprehensive approach of United States assistance should be examined as a possible model for future electoral assistance in Kenya and other countries.

BACKGROUND

The flawed 2007 Kenyan elections and the senseless violence that followed signaled to the world that democratization is an ongoing process that can be derailed if it is not supported. After the international community stepped in to help broker peace in Kenya, it was clear that more was needed to preserve the progress made over the years and to learn from the tragedy in Kenya so that it could move past the violence. The result of the efforts made by Kenyans and the international community occurred on March 4, 2013 when Kenyans overwhelmingly went to the polls to cast their votes for president and for five additional elective positions. The number of voters was not only large, but the most ever, with more than 86 percent of registered voters participating in the election.

The national elections marked the first elections held since the passage of the 2010 constitution, which established a newly devolved form of government, placing more power in the hands of citizens at the local level. These elections were also significant since they were the first since the disputed 2007 elections. Those elections divided much of the country along tribal lines, with President Mwai Kibaki receiving strong support from the Kikuyu, Embu, Meru and Akamba tribes and Raila Odinga mostly from the Luo, Luhya, Kalenjin, and Coastal tribes. This ethnic polarization hardened inter-tribal rivalries and brought to the fore unresolved historical conflict committed by and to Kenya's different ethnic communities. With the country's legal, political and security systems also paralyzed by these divisions, Kenya in late 2007 and early 2008 descended into a chaotic period of post-election violence, which resulted in the deaths of more than 1,000

people and the displacement of hundreds of thousands of people. The violence calmed after Kibaki and Odinga signed a power-sharing agreement brokered by former United Nations Secretary General Kofi Annan in early 2008. Known as the National Accord, the agreement created a 'unity government,' with Kibaki as president and Odinga occupying a newly created prime minister post.

Five years on, and Kenyans have emerged from that dark chapter in their nation's history with a new constitutional and political order and significant steps made toward national reconciliation and healing. Moreover, a new generation of young Kenyans has come of age as voters, aspirants to elective office and participants in the overall political and economic life of the nation. While Kenyans today are largely optimistic about the future of their country, this optimism and the reforms of the past five years faced a crucial test on March 4. In the lead up to these elections, there were signs of progress as well as concern. Kenya's political party and election laws have undergone significant reforms since the promulgation of Kenya's new constitution. Another key mark of progress was the establishment of the Independent Electoral and Boundaries Commission (IEBC), which was organized as an independent, technical body in charge of managing elections in a non-partisan and transparent manner.

While institutional and legal reforms helped push Kenya's electoral process toward a significant break from the past, there is still much that remains unchanged. For instance, political parties and coalitions remain electoral vehicles based on individual ownership and use ethnicity to rally voters rather than ideology or real platforms. This is a problem and continues to unnecessarily exacerbate tensions as seen in these elections. Politicians jump from one party to another showing a true lack of party loyalty and keep ethnic politics alive and well. In fact, if one looks at the current electoral coalitions compared to previous coalitions during the 2007 elections, then it can be surmised that Kenyan politicians come together for convenience rather than for strengthening party bases since partners in 2007 are now rivals in 2013. Additionally, in terms of the presidential contest, it is almost as if history repeated itself. While there were eight contenders for the presidency, the two front-runners represented the sons of the country's first president and vice president respectively. Uhuru Kenyatta is the son of Kenya's first president Jomo Kenyatta, while Raila Odinga is the son of Kenya's first vice president, Oginga Odinga.

In the final week leading up to the March 4 election day, the race was extremely close between Odinga and Kenyatta. Public opinion polls showed a statistical dead heat, with polls showing about 45 percent of the vote for both candidates, just shy of the 50 percent plus one needed to avoid a runoff. The general perception one month ago was that there would likely be a runoff in April. Kenya's new constitution introduced a new formula for electing the president. A candidate must receive 50 percent plus one vote and get at least 25 percent of the vote in half of the country's 47 counties to win in the first round. Otherwise, the top two vote getters in the first round must face off a month later in a second round of fresh voting, where the highest vote getter would be declared the winner. To the surprise of most Kenyans and most in the international community, Uhuru Kenyatta won enough votes to avoid the runoff.

LESSONS LEARNED

These elections were supposed to be peaceful and transparent and by most accounts they were, especially when compared to the 2007 elections, but there are areas where Kenyan institutions need to improve to ensure continued confidence is built in the new systems. A particular

emphasis should be placed on building the credibility of the IEBC, the judiciary, the media, civil society and political parties. All of these institutions deserve credit for the role they played to ensure a peaceful process, but many Kenyans still have concerns and blame the same institutions that helped contribute to the credibility of the process.

The institution that still remains at the center of discussion is the IEBC, which organized a relatively good election. Most Kenyans and the international community have commended the role it played and it was a much more open institution than its predecessor. However, there were moments that could have derailed its efforts. First, it was slow to organize voter registration, which started on November 19, 2012. The IEBC began the national voter registration process using biometric voting registers to ensure the identity of each voter. It ended up registering 14.4 million people, which fell short of the Commission's more ambitious goal to register 18 million people. Had it started earlier and provided more civic and voter education, the IEBC could have come closer to reaching its goal.

The second moment that could have derailed the voting process was the failure of the electronic voter identification machines in many voting centers. Luckily, each polling center was equipped with a physical, paper voter list in case of malfunctions and poll workers were well trained on the procedures. The third moment that could have derailed the voting process was the electronic submission of results. Kenyans had expected the presidential results within 48 hours, but due to the flawed electronic results system, results were not shared until March 9, five days after the conclusion of the election. To the credit of the IEBC, it kept Kenyans informed of the process and the problems with its systems, but to the loser of the presidential election, Prime Minister Raila Odinga, that certainly was not reassuring or enough. As we now know, he went on to challenge the results of the presidential election based on the electoral flaws.

The political parties continue to play both a positive and negative role in the entire political process. As previously stated, most parties are not driven by issues, but rather by individuals and/or ethnicity. The large coalitions formed for this election were encouraging in the sense that politicians recognize the need to compromise in order to move forward. In the Kenyan context, however, the parties are too affiliated with individuals or ethnic groups. Additionally, individuals hop from one party to another if they do not get the result they want. This was supposed to end during this election cycle, but the party primaries proved again the parties still lack true internal party democracy. With that in mind, Kenya has another five years to work on building stronger parties that abide by party finance laws, include more marginalized groups (women and youth) and are run more transparently. Women in particular were supposed to be big winners in these elections with clear mandates in the constitution about women's representation in the legislative institutions. However, the judiciary declared that mandates outlined in the constitution will be gradually implemented rather than fully enforced for these elections. Political parties could have pushed for a way to ensure more women were elected in single mandate seats rather than just the Women's Representative in parliament.

It is rare for any media organization or journalist to escape criticism for being biased and the Kenyan media and journalists are no exceptions and were highly criticized during the 2007 elections. This time around the Kenya media scored high marks. Generally, the media contributed to a peaceful election by broadcasting accurate and balanced stories. News outlets reminded Kenyans to keep the peace and many articles were written about the need to avoid political violence. One of the great moments of the election period was the broadcast of the two

presidential debates. In February, Kenyans watched the eight candidates participate in a two-part debate for the first time in the history of the nation. The debates were broadcast live on all of Kenya's national television and radio stations with millions watching and listening. The debates covered relevant and controversial issues including education, tribalism, land grabbing and the International Criminal Court (ICC). The most controversial topics were that of the ICC trial and land issue where many of the candidates attacked Kenyatta's credibility as a leader. Odinga even commented that Kenya could not be run via Skype at The Hague – a reference to the pending ICC trials against Uhuru Kenyatta and his running mate, William Ruto. Nonetheless, the debates further solidified the image of an independent media in the election process.

Civic and nongovernmental organizations play a significant and essential role in Kenya. These organizations usually act in place of government bodies in areas of healthcare, security, education and understanding what the government is actually supposed to do. These groups also are the primary sources of civic education. During election periods, they are important sources of voter education. They are often at odds with the government for various reasons, but most often because they receive foreign funding. The government often complains about foreign interference in local matters. However, that is a more extreme view but one that could come more into play if the Kenyan government restricts foreign funding to local and international nongovernment organizations to carry out various activities including civic and voter education. In the lead up to the elections, civic organizations were invaluable to the electoral process and it is important to maintain their ability to participate in the future.

Kenya's judiciary was key to the success of these elections. It was front and center up until the final ruling on the petition filed by Raila Odinga challenging the elections results. In 2007, the judiciary was viewed as a partisan body that contributed to the chaos that reigned during and following the presidential elections. Five years on and Kenya has a judiciary that is on the path to reform. The Judicial Service Commission is among one of the most potent reform mechanisms to ensure that the judiciary is accountable and transparent. Its role in recommending judicial appointments and its powers to investigate and rule on the integrity of existing judges is crucial to de-politicizing this important institution. The reforms the judiciary has undergone in the years following the 2007 elections laid the groundwork for the type of confidence witnessed during the Supreme Court hearing on Raila Odinga's petition. The Court's proceedings were made live on television, allowing millions of Kenyans to tune in, watch the proceedings, and then decide for themselves how they feel about the process. Even in the High Courts, election-related cases were brought by candidates contesting election results in constituencies and wards. The deliberations by the Courts were swift and their decisions were respected. These elections demonstrated that Kenyans can and will turn to their courts for justice. Reforms must continue, however, through continued support by the government and the people of Kenya.

It cannot be ignored that each of the sectors mentioned above - the IEBC, political parties, the media, civil society and the judiciary – all benefitted tremendously from the international community. Kenyans and Kenyan institutions of course deserve the credit for the conduct of election process, but the donor community's role was significant. In particular, it was clear that the United States electoral assistance, led by the United States Agency for International Development (USAID) was important when it came to team work and building synergies at all levels among implementers in Kenya. Regional working groups were formed to foster greater information sharing and to develop opportunities to maximize resources. Implementers were also

closely coordinating with the United States embassy and USAID, as well as other international donors, with a constant assessment of gaps and then concrete steps to fill them. Kenya benefited from this holistic approach, and as such no stone lay unturned in the effort to support Kenyans in having a peaceful and successful election.

LOOKING FORWARD

Overall, IRI remains optimistic about the progress made throughout the elections process. We recognize that more work needs to be done and that is why IRI will continue to work with local governments to strengthen the transition to a devolved system of governance as there are obvious issues to reconcile regarding the future of United States relations with Kenya. For instance, President Uhuru Kenyatta and Vice President William Ruto have been indicted by the ICC for claims that they incited violence immediately following the 2007 elections. It remains unclear as to how our government will interact with Kenya moving forward. While the formulation of United States policy will depend greatly on how the new Kenya administration supports the current ICC process and whether or not President Kenyatta and Vice President Ruto will fulfill their commitments to the process, it is also important to note that there are 47 new county governments – all which require important support to ensure their transition to devolution is complete. Another key issue is tribalism, which is deeply ingrained in Kenya. Despite constitutional reforms to prevent political parties from forming around tribal alliances, political alliances are formed around the largest tribes in Kenya and, when examining election results, one can see the trend of tribal strongholds supporting their candidate over another. Finally, full implementation of the constitution is critical to ensure reforms are completed as intended. In order for Kenya's newly devolved government to be successful, both elected leaders and citizens need to uphold the reforms necessary to put in place strong, county governments. It remains to be seen if the national government will change key reforms. There are checks and balances in place which, so far, have protected the 2010 constitution and efforts to decentralize the government.

Moving forward, the United States finds itself in a difficult situation; however, there are reasons to be optimistic. For example, the 2010 Kenyan constitution marked a clear path forward from Kenya's past electoral violence and strengthened the voice of Kenyans by decentralizing the government and marking the importance of human rights. As those reforms continue to be implemented, Kenya has the ability to lead the way in Africa for key reforms that embolden marginalized groups and give all citizens the ability to freely and openly participate in their government. Kenya is also moving towards a decentralized government which will put more emphasis on the local regions and move power away from the national government. If this works, Kenya will be a success story in Africa and beyond for the power of devolution and increasing citizen participation.

Mr. Chairman, IRI is committed to continuing its efforts to promote democratic governance throughout Kenya. Currently, we are conducting civic education for Kenyan civil society through outreach events, radio shows and other venues. IRI is also working with the Transition Authority, the government body tasked to oversee the devolution process, to conduct trainings for newly elected officials at the county level. IRI will continue to work with locally and nationally elected officials to increase their ability to fulfill their roles and responsibilities, as well as learn how to involve their constituents in the democratic process. We will work with civil society to encourage citizen participation in their government and bring both civil society

and elected officials together to improve the dialogue between the two groups. By empowering the local governments and providing them with the support they need to be successful, we believe that in turn, devolution will be stronger and have a better opportunity at growing in Kenya.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you so very much.

Dr. Jennings.

STATEMENT OF KEITH JENNINGS, PH.D., SENIOR ASSOCIATE AND REGIONAL DIRECTOR FOR SOUTHERN AND EAST AFRICA, NATIONAL DEMOCRATIC INSTITUTE

Mr. JENNINGS. Thank you, Mr. Chairman, members of the subcommittee. NDI is very happy to have this opportunity to comment on the March 4th elections in Kenya.

NDI has worked in Kenya since the mid-1990s and for the last 5 years has concentrated on helping to facilitate peaceful, credible processes around the 2010 Constitutional Referendum and on peaceful and credible elections in 2013, as well as continued progress beyond them. Mr. Chairman,

NDI's electoral programming in Kenya addresses six areas.

The Institute's work to promote dialogue among the political parties, the Registrar of Political Parties, and the Independent Elections and Boundaries Commission, through the Political Parties Liaison Committees—nationally and at the county level in all 47 counties—created a sustainable foundation for political dialogue at the county level going forward, as well as the national stocktaking on the election processes.

By facilitating Kenya's first multi-party youth work through the Inter-Party Youth Forum, hundreds of emerging leaders forged relationships that served as a brake on violence across the country in a manner that can continue to contribute positively over the years ahead.

NDI's support for increased women's political participation and representation included training more than 700 women and supporting 96 women candidates to share their platforms through radio prior to party nominations. This led to more women being nominated for positions in party primaries and promoted more women as political leaders at the community level.

NDI's engagement with civil society organizations working to ensure the participation of persons with disabilities improved advocacy and awareness of marginalized groups in the March elections and also a stronger focus among the organizations themselves to continue working for their rights within the political system.

NDI also provided technical assistance to 11 faith-based and civil society organizations that forged the ELOG, the Election Observation Group, which conducted long-term observation and independent verification of the Constitutional Referendum and the 2013 Presidential election through highly accurate Parallel Vote Tabulations. ELOG's PVTs confirmed that the official results were within the range of statistical projections, and ELOG also identified areas of action for improving the process going forward.

As you said, Mr. Chairman, NDI also conducted survey research on a regular basis that informed a range of political actors and the organization also conducted an early pre-election delegation that was headed by the former Botswana President, His Excellency Kitimele Masire that laid out a number of gaps in the process that allowed the election commission to address those.

Mr. Chairman, NDI's activities are supported by a wide variety of international funders including the U.S. Agency for International

Development, the State Department's Bureau of Democracy, Human Rights, and Labor, the Norwegian Ministry of Foreign Affairs, the Kingdom of the Netherlands' Ministry of Foreign Affairs, and the United Nations Development Program.

The financial assistance that NDI receives, especially from USAID, occurred ahead of the elections allowing sufficient time for the Institute to plan and implement a range of long-term activities and also to respond to last-minute contingencies. We believe the funders understood what was at stake in the elections in Kenya and responded accordingly.

Mr. Chairman, an accurate and complete assessment of any election must take into account all aspects of the process and no election can be viewed in isolation from the political context in which it takes place. It should also be noted, no electoral framework is perfect, and that all electoral and political processes experience challenges. The March 4 elections in Kenya were the most complex in the country's history. Six elections took place on the same day with a completely new legal framework for both political parties and the election management bodies. As you mentioned, we should also remember that more than 1,000 people had perished in the last election and 600,000 or more displaced.

Mr. Chairman, I would like to emphasize that NDI did not conduct a comprehensive international election observation mission for Kenya's election and that ultimately it is the Kenyan people who must determine the meaning of the March 4 polls. However, it is the Institute's view based on its intensive work that the Kenyan Presidential elections were credible although the process had many flaws. Unanimous ruling by the Kenyan Supreme Court affirming the outcome of the elections which was accepted by Presidential candidate Raila Odinga after his legitimate challenge before the Court marks an important milestone.

Elections are always the product of a political process and Kenya's 2013 elections resulted from popular reforms that not only set the stage for the vote and for the country to redeem its reputation. Therefore, Mr. Chairman, it is important that we look beyond the Presidential elections. For instance, the Jubilee Coalition headed by Uhuru Kenyatta, won 195 of the 349 National Assembly seats while the Coalition for Reform and Democracy, headed by Raila Odinga, won 143. In the new Senate, Jubilee secured 34 seats, while CORD won 27 of the 67 seats. At the county level, Jubilee has 24 governors, CORD has 23. And while Jubilee controls 26 county assemblies, CORD controls 21.

Sadly, not one woman was elected to the Senate, nor was one woman elected governor. Mr. Chairman, this illustrates that there should not be a zero sum political attitude suggesting that the winner takes all and the loser loses all following the March elections. While there are likely to be substantial difficulties, especially in the devolution process, there's a basis for positive development, particularly if genuine political spaces maintain for opposition parties and dialogue and accountability efforts and a move away from impunity is guaranteed.

Mr. Chairman, the Kenyan electoral process presents lessons that are useful when considering other countries and other elections in Africa and beyond. A few of the most salient are as follows:

Ultimately, it is the people of a country who determine the credibility of their elections and the country's democratic development. Additionally, while elections are a key ingredient of democracy, it should be understood that they are not synonymous with democracy. Thus, there is much more to be done to advance Kenya's democratic process.

Secondly, assistance by the international community to support democratic processes should begin early and be robust, coordinated and conducted in a proactive manner that respects the sovereignty of the host country. In this sense, election assistance must be seen as much more than a technical matter and should address important factors in the broader political environment, which was done in Kenya.

Third, systematic observation of election processes by nonpartisan citizen election monitoring organizations and international observers, which engage constructively with election management bodies, can make vital contributions to improving electoral integrity and public confidence. Such systematic, credible, independent verifications were not present in the 2007 elections.

Fourth, developing reliable communication among political parties and electoral authorities can improve the credibility of election processes and mitigate potentials for election-related violence. The efforts of the IEBC and the political parties through the Political Parties Liaison Committees at the national and county levels increased the potential for peaceful, credible elections, including over the tense election results.

Finally, Mr. Chair, there appears to be an emerging adherence to the rule of law and recourse to the courts for resolution of election-related disputes as opposed to past practices of taking to the streets and inciting violence. The court cases in Kenya and Ghana challenging the election results were watershed moments for the African democratization process, especially because the contestants accepted the authority of the country's highest courts in both cases.

In conclusion, Mr. Chair, it is clear that the recent Kenyan electoral process represents a reversal of the country's 2007, 2008 electoral violence. In fact, the elections and the challenges to the results strengthened the democratic institutions of Kenya and hopefully will serve as a hallmark in steering the country toward a culture of peace and tolerance during future elections. NDI stands ready to continue to assist the country. Thank you.

[The prepared statement of Mr. Jennings follows:]

Statement of Keith Jennings, Ph.D.

Senior Associate and Regional Director
Southern and East Africa Programs

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS (NDI)

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL ORGANIZATIONS

April 16, 2013

"KENYA'S 2013 ELECTIONS: AN EFFECTIVE ASSISTANCE MODEL?"

Mr. Chairman, Members of the Subcommittee, thank you for this opportunity to comment on the electoral and political processes surrounding the March 4, 2013, elections in Kenya.

NDI has worked in Kenya since the mid-1990s and for the last five years has concentrated on helping to facilitate peaceful, credible processes around the 2010 Constitutional Referendum and on peaceful and credible elections in 2013, as well as continued progress beyond them. Mr. Chairman, NDI's electoral programming in Kenya addresses the following areas.

- The Institute's work to promote dialogue among the political parties, the Registrar of Political Parties (RPP) and the Independent Elections and Boundaries Commission (IEBC) through the Political Parties Liaison Committees (PPLCs) - nationally and in the 47 counties - creates a sustainable foundation for political dialogue at the county level going forward, as well as for national stocktaking on the election process. The national and county level PPLCs provided a basis for sharing information and concerns, which allowed issues to be addressed and mitigated potentials for violence. NDI's work with individual parties to carry out internal reforms helped them comply with the new legal framework and also helped them to prepare for peaceful participation in the 2013 elections.

- NDI has also been able to facilitate forums (Inter-Party Action Groups) among senior members of political parties on important reform issues in Kenya. This work started before the 2010 referendum on the draft constitution. Through these dialogues, senior political leaders from the major parties were able to reach consensus on contentious issues in the draft constitution. Since 2010, these forums have met regularly and have been instrumental in securing political consensus, such as on regulations to the 2011 Election Act and 2011 Political Parties Act.

- By facilitating Kenya's first multi-party youth work through the Inter-Party Youth Forum (IPYF), hundreds of emerging leaders forged relationships that served as a brake on violence

across the country in a manner that can continue to contribute positively over the years ahead.

- NDI's support for increased women's political participation and representation included training more than 700 women and supporting 96 women candidates to share their platforms through radio programs prior to party nominations. This led to more women being nominated for positions in party primaries and promoted more women as political leaders in their communities.

- NDI's engagement with civil society organizations working to ensure the participation of persons with disabilities improved advocacy and awareness of marginalized groups in the March elections and also a stronger focus among the organizations themselves to continue working for their rights within the political system.

- NDI provided technical assistance to 11 key faith-based and civil society organizations in forging Kenya's Election Observation Group (ELOG), which conducted long-term observation and independent verification of the Constitutional Referendum and 2013 presidential election through highly accurate Parallel Vote Tabulations (PVTs). ELOG's PVTs confirmed that the official results were within the range of PVT statistical projections, and ELOG identified areas for action to improve processes and establish accountability for shortcomings, thus reducing political volatility and improving potentials for furthering electoral integrity.

- NDI also organized an early pre-election delegation, headed by former Botswana President H.E. Kitimele Masire, that identified key gaps in the process, leading to actions on its recommendations. During the March 4 polls, the Institute liaised with ELOG, international election observers and other key actors.[1]

NDI's activities were supported by a wide variety of international funders including the U.S. Agency for International Development (USAID), the State Department's Bureau of Democracy Human Rights and Labor (DRL), the Norwegian Ministry of Foreign Affairs, the Kingdom of the Netherlands Ministry of Foreign Affairs and the United Nations Development Programme (UNDP). The financial assistance NDI received, especially from USAID, occurred well ahead of the elections, allowing the Institute sufficient time to plan and implement a range of long-term activities and also to respond to last minute contingencies. We believe the funders understood what was at stake in the elections in Kenya and responded accordingly.

Mr. Chairman, an accurate and complete assessment of any election must take into account all aspects of the process, and no election can be viewed in isolation from the political context in which it takes place. It should also be noted that no electoral framework is perfect, and all electoral and political processes experience challenges. The March 4 elections were the most complex in Kenyan history; six elections took place on the same day, within a completely new legal framework both for political parties and the election management body. It is also important to remember that the elections took place five years after more than 1,000 people were killed and more than 600,000 were displaced in violence that occurred after Kenya's 2007 elections. In addition, the political

[1] Please see Annex I for a description of NDI's program activities in Kenya. Annex II presents NDI's Pre-Election Delegation Statement and Annex III is a presentation of the ELOG's PVT findings.

environment was highly polarized, especially due to the ongoing cases in the International Criminal Court against one of the major presidential candidates and his running mate.

Mr. Chairman, we would like to emphasize that NDI did not conduct a comprehensive international election observation mission for Kenya's elections and that ultimately it is the people of Kenya who must determine the meaning of the March 4 polls. However, it is the Institute's view, based on its intensive work, that Kenya's presidential election results were credible, though the process included important flaws.

The unanimous ruling by Kenya's Supreme Court affirming the outcome of the elections, which was accepted by presidential candidate Raila Odinga after his legitimate challenge before the Court, marks an important milestone. The detailed ruling from the Supreme Court is due today and may shine further light on the election process, with implications for future elections in Kenya.

With the formation of the newly elected government, including both houses of Parliament, county assemblies, governors, as well as the national executive, Kenya also has established its formal opposition and embarked on a critical constitutionally-mandated process of devolution and an improved system of checks and balances. At the same time, Kenya's vibrant civil society, which has been central to Kenya's reform process, has a meaningful role to play going forward. It is the Institute's view that the attention of Kenyans and the international community over the years since the 2007-2008 tragedy has been warranted, and continued heightened attention is needed to help Kenya address the difficult issues and critical challenges that are immediately ahead.

Mr. Chairman, the 2013 elections were not only an opportunity for the Kenyan people to redeem the country's reputation; they were critical for the stability of the second largest non-oil producing economy in Africa and the hub for security and economic advancement in all of East Africa. The elections and the process following them are important for other reasons as well.

This time the international community was proactive in supporting Kenyan calls for peace, which were so resounding that a few politicians even complained of "peace fatigue." While it ultimately was the Kenyan people who decided that elections would be peaceful or violent, the work of the international community, through its engagement with all the key players and sectors early on in the process, was also instrumental in achieving a peaceful outcome.

The bloodletting in 2007-2008 was only ended through Kenya's National Reconciliation and Dialogue, a mediation led by former UN Secretary General Kofi Annan, as head of the African Union's Panel of Eminent African Personalities. That mediation launched a reform process, which included: the Waki Commission's inquiry into post-election violence; the Kriegler Commission's independent review of the election process; the National Integration and Integration Commission; an exceptional process leading to the adoption of the new constitution; unprecedented judicial reform; as well as establishment of the IEBC. In addition, much was done by Kenyan civil society to campaign against the use of political violence and to ensure electoral integrity.

Elections are always the product of a political process, and Kenya's 2013 elections resulted from popular reforms that not only set the stage for the vote but for the type of governance that might follow the elections, if the people remain engaged and governance is representative. The success of assistance to Kenya's elections therefore depends in significant part on whether the gains of the reform process are maintained going forward.

Indeed the reform process in Kenya has occurred over two decades starting with the opening of multi-party democracy in the early 1990s. Much of this progress is a result of the demand driven advocacy of civil society, in the words of former civil society activist and now Chief Justice of the Kenya Supreme Court, Willy Mutunga, who called this process "constitution making from the middle." If progress is to continue, Kenya's international development partners must continue to support the efforts of Kenyan civil society.

The 2013 elections, the first under the new constitutional order, saw more than 85 percent of Kenyans came out to vote in a process where the political choices were clear. Voters withstood very long waits in line, frustrations over technology failures and other problems, as they exercised their political franchise.

It is important to look at more than the presidential result in the March 4 elections.

- The Jubilee Coalition won 195 of the 349 National Assembly seats, while the Coalition for Reform and Democracy (CORD) won 143.
- In the new Senate, Jubilee secured 34 seats, while CORD won 27 of the 67 seats.
- At the county level, Jubilee has 24 governors and CORD has 23, while Jubilee controls 26 County Assemblies and CORD controls 21.
- Unfortunately, not one woman was elected as a governor or to the new Senate.

Mr. Chairman, this illustrates that there should not be a zero-sum political attitude suggesting that the "winner takes all and the loser loses all" following the March elections.

While there are likely to be substantial difficulties, especially in the devolution process, there is a basis for positive development — particularly if genuine political space is maintained for opposition voices and for dialogue and accountability efforts by a vibrant civil society and robust media. The constitutionally prescribed distribution of powers among the central government and the counties and among the executive, parliament and the courts will be enlivened or diminished depending on whether all sectors of Kenyan society are enabled to contribute to representative governance. Correspondingly, the international community is faced with determining how to best assist Kenyans working for that.

The IEBC results showed: 6,173,433 votes (50.07 percent) for Mr. Uhuru Kenyatta; 5,340,546 (43.31 percent) for Mr. Raila Odinga; and 6.62 percent for the remaining six candidates and the rejected ballots. The result for Mr. Kenyatta was only 0.037 percent different from ELOG's PVT statistical projection for him, which was well within the PVT's 2.7 percent margin of error. ELOG, in confirming the credibility of the IEBC results, also called on the IEBC to immediately make public any information relevant and material to the results announced, urged those who felt aggrieved by the outcome to seek redress through the courts and called upon the courts to act expeditiously and to apply fairness in ensuring equal protection of the law. In NDI's view, ELOG correctly combined its confirmation of the credibility of the presidential results with a call for further urgent actions to ensure electoral integrity, and that approach applies equally following the Supreme Court's unanimous ruling.

There were widespread failures in the functioning of electronic poll books on election day, though backup hard copies of voter lists were used. The system for electronic transmission of results from

the polling locations failed, though in accordance with the law official paper tally sheets were used to tabulate official results. Party agents and international observers were excluded from part of the results tabulation at the national level, raising concerns, suspicions and tempers among the parties. Lack of clarity in advance of polling caused uncertainty and controversy over whether all or just valid ballots should be used to determine percentages of votes won by the presidential candidates, and other problems and issues emerged. All of the issues took on greater importance in light of the small margin by which Mr. Kenyatta was reported to have avoided a runoff with Mr. Odinga.

In these circumstances, the IEBC has much to do to address lessons learned and to fulfill its commitments to transparency -- notwithstanding its considerable accomplishments. For example, it has yet to release all results at the "polling stream" level. That action is not only called for by the IEBC's commitments, it is vital to parties, candidates, citizen election monitors and others seeking to examine electoral strengths and weaknesses, and it is at the heart of electoral transparency. Without releasing such disaggregated election results, suspicions will likely fester, while their release will allow confidence to be reinforced as a result of comparisons of tally sheet copies issued on election night and other independent verifications. The IEBC also should involve the parties through the Political Party Liaison Committees and civil society in stock-taking and sharing lessons learned about flaws and strengths identified for election-day and the pre-election processes.

Mr. Chairman, elections are a mechanism by which citizens can hold elected leaders to account, and there must be accountability in the administration of elections for public confidence to be established and sustained. In close elections, where nearly half the population is disappointed in the outcome, and particularly where flaws are apparent, transparency and accountability are vital. Inclusiveness in lessons learned stock-taking is essential to ensure participation in future elections. The efforts of ELOG and others in civil society and political sectors, including points advanced by parties through the PPLCs and in other ways, will be essential for defining a realistic, meaningful and immediate agenda for correcting flaws in the electoral process. This is an urgent, immediate post-election challenge.

At the same time, the political process beyond Kenya's elections is the key to further development. Working with the newly elected Governors, County Assemblies, members of both houses of parliament and other governmental agencies will be critical. In addition, in order to secure full implementation of the 2010 Constitution, it will be vital to: continue work with political parties at the national and county level to support the development of political parties as institutions with a focus on policy implementation:strengthen representation of women and youth within governance structures; and secure more and active citizen participation in government at all levels.

In addition, it will be important to support continued work with civil society on electoral reform and constitutional implementation, continued work with young people and other marginalized sectors of the population; continued support for Kenya's democratic institutions, particularly at the county level, and including assistance to political parties to strengthen party branches and adapt to the changes that devolution brings; support for inclusive social and economic development processes; and civic education to address gaps in understanding among the Kenyan public regarding the purposes and functions of devolution and the new elected and appointed bodies.

Mr. Chairman, the Kenyan electoral process presents lessons that are useful when considering other countries in Africa and beyond. A few of the more salient lessons are as follows.

- Ultimately, it is the people of a country who determine the credibility of their elections and the country's democratic development. Additionally, while elections are a key ingredient of democracy, it should be understood that they are not synonymous with democracy. Thus, there is much more to be done to advance Kenya's democratic process.

- Assistance by the international community to support democratic processes should begin early and be robust, coordinated and conducted in a proactive manner that respects the sovereignty of the host country. In this sense, election assistance must be seen as much more than a technical matter and should address important factors in the broader political environment, which was done in Kenya. This is a valuable point for approaching other countries, including those that are vulnerable to political violence.

- Just as democracy is much more than elections, genuine elections are requisite for it. Democratic elections serve three basic functions in any country: they are the means to resolve peacefully competition for political power; they are the vehicle by which citizens express their will to determine who should have their authority to govern; and they are the way the electors choose policies that they believe will deliver improved lives for the citizenry. To be credible, elections must be inclusive, transparent and encompass accountability; to the degree these elements are robust, public confidence will be high, and, to the degree any or all are deficient, public confidence in the elections and the resulting government will fall. These measures should be applied in a forward looking manner as well as considering Kenya's electoral process up to March 4, and this stance is important for other countries as well.

- When elections fail, particularly where there is widespread violence and national trauma, as was the case in Kenya in 2007-2008, extraordinary efforts at dialogue across political divides, stock-taking, reconciliation and reform are required to regain the potential for stability and progress. Even then, the circumstances remain fragile and require sustained attention. These steps are widely applicable to other countries.

- Mounting peaceful elections with integrity is a complex challenge that stretches across numerous institutions and processes – and requires engagement from all segments of a country's population. The quality of an election process typically reflects the democratic character of governance leading to an election and can be an important indicator of the nature of government that results from an election. Following up on elections in a rigorous manner that allows the country to understand the strengths of the process as well as to grasp the dimensions and impact of flaws is central to establishing public confidence and demonstrating accountability. It is also essential to ensure future peaceful, credible elections. Much was done in Kenya in these respects since 2008, and these lessons need to be applied in appropriate measure to the 2013 election process. The points are also relevant to many other countries.

- Systematic observation of election processes by nonpartisan citizen election monitoring organizations, which engage constructively with election management bodies, can make vital contributions to improving electoral integrity and public confidence. ELOG's long-term observation of the process shines light on important factors, and its PVTs reduced uncertainty and volatility concerning the results of the Constitutional Referendum and the March 4 presidential election, while pointing to immediate steps needed by the IEBC,

political parties and the courts. Such systematic, credible, independent and nonpartisan verification was not present in the 2007 elections. In examples of close elections, like Kenya's March 4 poll and Ghana's 2008 presidential election, PVT's by nonpartisan citizen observers contributed significantly to peaceful outcomes and confidence that the vote tabulation was credible. This lesson is important for other countries as well.

- Developing reliable communication among political parties and electoral authorities can improve the credibility of election processes and mitigate potentials for election-related violence. The efforts of the IEBC and the parties through the PPLCs at the national and county levels increased the potential for peaceful, credible elections, including over the tense election results consolidation period. The relatively long-term efforts at building the PPLCs demonstrate their value over Election Day and beyond. This lesson, learned in South Africa's 1994 elections, requires considerable effort and is too often not adequately applied.

- There appears to be an emerging adherence to the rule of law and recourse to the courts for resolution of election-related disputes, as opposed to past practices of taking to the streets and inciting violence. The court cases in Kenya and Ghana, challenging the election results, were watershed moments in Africa's democratization process, especially because the contestants accepted the authority of the country's highest court in both cases.

- Elections – and politics -- are processes, not single events. Assistance in Kenya took place over a relatively long term, and – if the efforts are to be fulfilled – immediate attention is needed to follow-through in an election cycle that is not fully completed and in a political process that is continuing at a critical juncture.

In conclusion Mr. Chairman, it is clear that the recent Kenyan electoral process represents a reversal of the country's 2007-2008 electoral violence. In fact, the elections, and the challenge to the results, strengthened the democratic institutions of Kenya and hopefully will serve as a hallmark in steering the country toward a culture of peace and tolerance during future elections.

The political violence in the time leading to the March 2013 elections and the isolated incidents of violence on election day, nonetheless, cannot be ignored. And, the need to address long term issues and solutions related to the 2007-2008 tragedy remains. If the governance processes following the March 4 elections proceed in the spirit of that reform process and the compact envisioned in Kenya's new constitution, it will be easy to say that Africa and other parts of the world will benefit from Kenya's example. NDI is committed to continue to assist such a process and urges others to support it as well.

Thank you.

Mr. SMITH. Dr. Jennings, thank you very much as well and now Mr. Sweeney, please.

STATEMENT OF MR. BILL SWEENEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS

Mr. SWEENEY. Thank you, Mr. Chairman, and Ranking Minority Member Bass, for the opportunity to testify before the subcommittee on the recent general elections in Kenya. IFES, in a joint venture with the other organizations represented here today, received a grant from USAID in May 2011 to provide technical assistance to build the capability and sustainability of the newly-formed Independent Electoral and Boundaries Commission known as the IEBC. I was in Kenya during this election and had the chance to meet with Chairman Ahmed Hassan and the IEBC Commissioners on several occasions. "Kenya will not burn" is what Chairman Hassan said to me. His message was powerful, memorable, and accurate.

Mr. Chairman, IFES was able to work with the new election commission to implement a number of very high profile reforms. These include five major pieces of new legislation, creating systems to handle political party registration and candidate nomination, redistricting of electoral boundaries, registration of 14.3 million voters in less than 1 month, recruitment and deployment of 260,000 new poll workers and introduction of biometric voter registration, electronic voter identification and a results management system. This and more was accomplished in under 15 months. The scale of what the IEBC was able to accomplish was ambitious and impressive even for the most seasoned election commissions. This election has been recognized as peaceful and credible by most international and domestic stakeholders. Nevertheless, it does raise at least one key question for development agencies and implementing organizations. How can we better help our partners manage expectations when a society demands more change in public administration at a faster pace than can be realistically implemented?

In Kenya, there was an attempt to implement too much technology in too short a time. In countries where there is a trust deficit due to both past behaviors and suspicions about the process, the choice often is new election technology. There are issues around adapting, procuring and then deploying new technology in any political environment. In Kenya, due to massive pressure from the political leaders of all parties and civil society, the IEBC decided to implement three new technologies simultaneously, technologies that were dependent on infrastructure such as reliable electric power and accessible cellular channels. This situation is where international technical assistance from trusted organizations can make a difference.

Some possible outcomes, such as abandoning paper lists at polling stations and completely entrusting new technology, can be walked back. Other decisions can be implemented as best as possible with the partnership of experienced global personnel who know technology and the election process from decades of experience. Election technology, in general, is a great innovation and can enhance the trust, transparency and speed of information on Elec-

tion Day. However, the technology has to work perfectly on Election Day. The election workers have to be trained in how to use the technology. The technology, like all other voting supplies, has to be distributed to the polling places on time. These are all serious, logical issues for every election commission.

The Kenya assistance model represents a true partnership and reinforces the importance of international support to election management bodies. Elections are a process, not just an event. The IEBC and IFES are already reviewing lessons learned in how to prepare the reform agenda toward the next elections scheduled for August 2017.

Mr. Chairman and members, thank you for your time. This concludes my remarks.

[The prepared statement of Mr. Sweeney follows:]

Testimony of William R. Sweeney, Jr.
President & CEO of the International Foundation for Electoral Systems
Kenya's 2013 Elections: An Effective Assistance Model?
House Committee on Foreign Affairs
Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
April 16, 2013

Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee today on the recent general elections in Kenya. I appreciate this opportunity to share with you our experience supporting this electoral process that was in no small part due to the assistance of the U.S. Government and other international donors.

The International Foundation for Electoral Systems, better known as IFES, has worked in Kenya since 2002 advancing the rights of its citizens to participate in free and fair elections. Some of the most notable areas of technical support that we provided includes assistance to the Interim Independent Election Commission with the implementation of an electronic results transmission system, which resulted in a timely and transparent release of by-election and constitutional referendum results.

Building on this success, IFES and its partners under the Consortium for Elections and Political Process (CEPPS) received a grant from the United States Agency for International Development (USAID) in May 2011 to provide additional technical assistance to build the capacity and sustainability of the newly-formed Independent Electoral and Boundaries Commission (IEBC). This targeted support included capacity-building in the areas of voter registration, voter education, results transmission, oversight of political parties and the development of a dispute resolution mechanism. The overall goal of this technical support was to facilitate the IEBC's role in conducting transparent, credible and violence-free elections.

The Context of Our Support

The March 4 polls were the first nationwide elections in Kenya since the December 2007 presidential elections. As you are likely already aware, there was a disturbing outbreak of political violence after this vote that resulted in the death of approximately 1,500 people and the internal displacement of 300,000 more. The 2007 elections and the violent events that followed were a disappointment for Kenyans and members of the international community who had viewed the country as a bastion of stability in a volatile region.

In the aftermath, many reforms were initiated to address the mismanagement of the 2007 polls and the deep divisions within Kenyan society. These reforms included a new constitution that was supported and adopted by nearly 67 percent of the population in the peaceful 2010 referendum; the creation of a new, independent and publically-vetted election commission; the devolution of political power to the county level; and important judicial, security and media reforms.

These reforms also required the creation of an entirely new legal framework, including new laws governing the management of elections, the registration and financing of political parties, the

formation of new levels of government, the implementation of gender quotas, as well as the creation of regulations and procedures, forms, and technology to support their implementation. This reform process, which began with the enactment of the new constitution, was to culminate with the transition of power after the 2013 elections.

The Framework of Evaluation
Mr. Chairman, as the dust settles from the March 4, 2013, election, we can now begin to evaluate the effectiveness of the technical election support that IFES provided. In doing so, we would suggest the following questions serve as the base criteria for such an evaluation:

- Did the election's outcome reflect the will of the Kenyan voters, and was the election conducted in a manner that could withstand the inevitable scrutiny after such a close election?
- Were the advances in the democratic process significant enough to justify the investment?
- Did the assistance provided play an instrumental role in development of the institutions required to help Kenya realize its constitutional vision of major democratic reforms?

Accomplishments
Mr. Chairman, I believe the preparation and formulation of the CEPPS development framework in Kenya is at the cutting edge of what we know about sustainable political development, particularly in the context of technical election support. The CEPPS framework seeks to empower local assets by either partnering with government institutions that are directly responsible for implementing a powerful new mandate or with organizations that are instrumental in advocating for and ensuring change.

As part of this reform effort, the United States Government enabled IFES to provide a number of highly experienced advisors to the IEBC. Unlike many post-war elections where the international community serves as an interim election management body, we were strictly advisors, not "deciders". To that end, IFES recruited some of the brightest and most innovative minds on election management and technology in the business. Our organization pulled these individuals from both inside and outside of Kenya (including the United States, United Kingdom, Ireland, Uganda and the Philippines) to create a diverse and extremely talented pool of professionals, who earned the respect and trust of their IEBC colleagues. Our expertise continually sought to provide a range of options to the IEBC for decisions they faced, while also making recommendations that drew upon our 26 years of experience in over 135 countries around the world. Furthermore, we have had a commendable level of communication and collaboration with our State Department and USAID counterparts, including U.S. Ambassador Robert Godec and USAID Mission Director Karen Freeman.

Because of our longstanding commitment to supporting the electoral process in Kenya, combined with the professional relationships we have cultivated over the last decade, IFES was able to work with the new election commission to implement a number of very high profile reforms within a timeframe of 15 months or less. Some of these notable accomplishments include the implementation of five major pieces of new legislation including the IEBC Act, Elections Act, Political Parties Act, Kenya Citizenship and Immigration Act, and the Leadership

and Integrity Act. In addition, the IEBC created (or coordinate the creation with other institutions) the Registrar of Political Parties, Political Parties Disputes Tribunal, Political Party Liaison Committees in every county and constituency, and the rules of procedure for election dispute resolution.

Moreover, the IEBC had to create systems for the registration of political parties, the registration of independent candidates, and the entirety of their nomination procedures. The IEBC also carried out a new, nationwide delimitation of electoral boundaries; registered 14.3 million voters in less than one month; deployed 32,000 electronic voter identification systems (EVIDs), 32,000 mobile phones, and six sets of 18 million ballots. On top of all this, the IEBC introduced 3 major pieces of election technologies for the first time, including biometric voter registration (BVR), electronic voter identification, and a results management system.

On top of all this, the IEBC recruited 260,000 new poll workers, set up a nationwide call center for questions and answers, and created a transparent and auditable system for official reporting of votes. Please keep in mind that this was all done in 15 months or less and in one of the most contentious election environments in the world. Indeed, the scale of what the IEBC was able to accomplish was ambitious and impressive for even the most seasoned of election commissions around the world.

Mr. Chairman, I was in Kenya during this election and had a chance to meet with the IEBC Chairman and the other IEBC Commissioners on several occasions. Their sense of determination and resolve to ensure that this election was not a repeat of the 2007 vote was highly commendable. IEBC Chairman Hassan personally remarked to me that, "Kenya will not burn" and I must say that his message to me was powerful, memorable and accurate.

Thus, the culmination of all this preparation and resolve was the March 4 election, where the eyes of the world were upon the IEBC's management of this big event. In this election, 86 percent of registered voters turned up to vote– a number that constitutes the highest turnout in Kenya's history. Ultimately, the new Kenyan president, Mr. Kenyatta, was elected by a margin of 8,000 votes, or 7/100ths of a percent of the total votes cast, making it inevitable that the result would be challenged.

Many of these legal challenges focused on the technology that failed to perform as the election commission had planned. In addition, there were many well-publicized news articles on the breakdown of election technology in the process. Let me be clear in saying that what was cited as a failure of technology was actually a failure of project management. In short, there was an attempt to implement too much technology in too short of a time and important details were lost in the process. These issues can and should be corrected with proper attention to project management in the future.

However, what also remains clear is that the media and candidates often failed to understand the vote counting and reporting process. The legally-defined process for results reporting relied not on technology, but on paper forms and signatures that created legal accountability for election officials. The electronic system was designed to provide immediate flow of data and transparency while waiting for the official reports to come in. Although the system faced

problems, it did avoid a one of the central problems of the fated 2007 election, which was a total blackout of communication while the election commission tabulated results.

Ultimately, the official paper-based procedure of counting and tallying votes was certified as credible and ensured the Kenyan electorate's presidential choice was made known. The credibility of the IEBC's count was corroborated by the parallel vote tabulation carried out by the Elections Observation Group (ELOG) in Kenya and by most of the international observation missions, such as The Carter Center.

Perhaps the most important evidence the election process was credible was that the second place finisher, Mr. Raila Odinga, accepted the results and then called for calm and unity amongst his own supporters. This action ultimately led the way to a successful transfer of power in early April, which is one of the key indicators of democratic consolidation in the study of democracy and governance.

Moreover, except for the unfortunate clashes that occurred in western Kenya after the Supreme Court ruling upholding Mr. Kenyatta as the winner, there were very few incidences of violence or unrest in the country. The fact that this event was peaceful is a testament to the resolve of Kenyan citizens who were quite vocal about desiring peace and also to effective new institutions, such as the Supreme Court that dealt with many of the highest-profile election disputes. Because of the judiciary reforms that had taken place in the last two years, there was more confidence and trust in the judiciary to address complaints and disputes in an unbiased manner.

In all, I believe there will be two important points that will remain in the historical narrative about this election. Simply put, this election has been recognized as peaceful and credible by most international and domestic stakeholders. This much was recognized by our own government including the Secretary of State and the White House. IFES takes pride in the fact these were the two main objectives of its USAID-funded program in Kenya.

Lessons Learned

Mr. Chairman, while the Kenya model will go down as successful, I would also say the model does raise new, appropriate questions for development agencies and implementing organizations.

One of the things that IFES looks for in the countries we work is that crucial element of people mobilized for change. We think foreign assistance money is most effective and sustainable when it seeks to empower local assets in governments or communities. This can be evident in institutions that have clear mandates for change and a demonstrated desire to follow through with that work. We think leveraging this type of existing strength is one of the building blocks to sustainable, effective and efficient development.

Please let me be forthright in saying, though, that there is no shortage of these qualities in Kenya, particularly in the institutions and organizations that acted as our beneficiaries. The IEBC, who was the beneficiary of much of our support, was entrusted with a massive task that constituted a broad and ambitious mandate. It is no understatement to say the stability of the country was put in the hands of the Commission this March.

The question the Kenya model raises, however, addresses the issues of change from a different angle. Namely, that question is not how we can map, locate and partner with elements of change within society. Rather, the question is how can we do better at helping our beneficiaries manage expectations when a society demands more change at a faster pace than can be realistically implemented? I expect this issue to become more and more prevalent in the election assistance field, particularly as it relates to the implementation of new forms of technology.

We must ensure that our partners know election technology helps mitigate certain types of fraud, but it also opens the door for other (more technologically advanced) forms of fraud. Moreover, without auditable paper trails, election technology can also open up the process to widespread failure and a lack of transparency. Election technology is a great thing, but it must be done in such a way that is responsible to the electoral process at large.

As an example of this, I would draw the attention of this Committee to early August 2012 when due to a delayed and ultimately canceled tender for biometric voter registration (BVR) kits, the IEBC made a decision to implement Optical Mark Reader machines for the March 2013 elections instead of a fully biometric system. This was done because the timeline for sourcing, evaluating, purchasing, shipping, distributing and training had become dangerously short to ensure a successful implementation of this technology. The IEBC Chairman was then summoned to a meeting of Cabinet-level officials, who made it known that they were fully behind a biometric system. The advice of the Executive eventually trumped the IEBC Chairman and the country proceeded to source BVR kits in a government-to-government arrangement with the Canadian Corporation Commission despite the narrow and ambitious timeframe the IEBC then faced. As a result, the voter registration process was negatively impacted by delays and faulty or lack of BVR kits in some polling stations due in great part to the circumstances in which the technology had to be implemented and utilized.

Timelines were always an issue throughout this electoral process in Kenya, Mr. Chairman. Given the number of statutory deadlines and new prerequisites for the implementation of the electoral process prior to March 2013, the IEBC was faced with a continuous race against the clock compounded by the pressure to conform to numerous political agendas.

In the coming weeks and months, IFES will be working with the IEBC to help lead a comprehensive lessons learned event. IFES views elections as a cycle and maintains that initial planning for the next event must begin almost immediately following the completion of the previous election. As such, we will help assess the 2013 election, apply lessons learned to planning for the next election and help propose any additional electoral reform that is necessary.

Continued Support

Mr. Chairman, I think the Kenya model reinforces the importance of technological international support to the election process. While the Commissioners that IFES worked with were highly-educated, extremely respected and very competent individuals, many of them lacked election management experience, which is very specific to this type of democratic process. These Commissioners were now also being asked to manage one of the world's most visible elections in one of the world's most contested electoral environments. To make matters more complicated,

the IEBC was introducing technology that required a level of expertise which could only come from highly skilled election and ICT specialists.

Moreover, the trend of foreign election assistance is increasingly focused on procuring the services of highly technical support that cannot be sourced within the country. Without this crucial expertise, particularly as it relates to the introduction of technology into the electoral process, the ramifications of making decisions without the proper experts to advise could undermine the whole process.

While I was in Kenya for the election, I learned of a story that highlights the importance of international expertise. Nearly two weeks before the election date, the eight presidential campaigns joined together and signed a document demanding from the IEBC to scrap the paper register. Given the amount of ballot stuffing in the past, the candidates felt the biometric kits that polling stations were provided constituted the most secure way of ensuring the identity of the potential voter. I have no doubt this request was a good-faith effort to ensure the accuracy and transparency of the process of identifying voters at the polling stations.

However, the bigger picture of risk and election credibility was being lost. The election commission was about to embark on an election utilizing two forms of technology that had very little testing. Even more, the candidates were operating under a misconception regarding how the technology transmitted its data. In the event that these biometric kits had not worked, and there was no paper register involved, there would have been virtually no way to ensure a voter was registered to vote at a particular polling station. That move could have not only threatened the credibility of the vote, but it could have shut down the vote itself. I would like to credit our Country Director, Mike Yard, who was able to make a last minute intercession with the candidates' representative and explain why scrapping the paper register would have been an unadvisable idea at that stage. Mr. Yard, I must also say, had the full backing of the U.S. Embassy and other donors.

As we all know now, the paper register and paper ballots were ultimately what ensured the integrity of the Kenyan election. If internal political pressure had been exerted upon the Commission to scrap their paper register and had the IEBC given into the demand, I am afraid the international community would now be trying to mitigate widespread election violence as a consequence.

Conclusion

Mr. Chairman, it is with this in mind that the Kenya assistance model reinforces the need for (and importance of) highly-skilled foreign assistance. The model also introduces questions for us to reflect on and learn lessons, particularly as to how we can better help our beneficiaries in managing the expectations of the population they represent and the context in which they can meet these expectations. It is clear the Kenya assistance model has been a success and represents a true partnership between the international community and the Government of Kenya. Enough safeguards were included to ensure it was a credible vote (not critically dependent upon technology) and the process was peaceful. As mentioned, elections are a process and not an event and, as a result, IFES hopes to stay engaged with the IEBC and the democratic evolution of Kenya for the next set of elections scheduled in August 2017.

Mr. SMITH. Thank you very much, Mr. Sweeney. And the information you've conveyed, I think is astounding, 14.3 million voters signed up in less than a month; 32,000 electronic voter identification systems and the list goes on. I'm wondering, you did say that the failures in technology were really failures of project management. I wonder if you might want to elaborate on that. I have two brothers who are pilots, and they'll always be the first one to say that it's often not the machine, it's pilot error. So are we talking about people didn't know the process? How would you elaborate on this failure of project management, if you would?

Mr. SWEENEY. Thank you, Mr. Chairman, and first of all, I would never ascribe anything to pilot error.

Mr. SMITH. Okay. You must be a pilot.

Mr. SWEENEY. However, in the case of Kenya, for example, they accomplished great things. Their registration system involves a photograph and fingerprints. Those were organized onto machines for the 1,000 voters per polling station and the voters would then use their thumb on the machine so as to pull up identification. That was great as long as either there was electricity in the classroom where the polling place was taking place or the batteries worked. Now batteries are funny things. Sometimes they say they'll work for 12 hours, but then they're not completely charged and sometimes they run out of power because to take a thumbprint is a very large draw on a battery. And so 1,000 people over the course of a number of hours, the batteries in some cases failed.

Now, there was a point where the political process and civil society said don't continue with the investment in the paper list. Let's completely rely on technology. The IEBC was able to make the point that, first of all, the paper list was what was the official register of voters as stated in the law that might not have been as fancy and as glitzy, but it was the official register. And secondly, if electric power or battery power failed, you had the backup. But finally, third, the election commission invested seriously in the identification process, so there were actual photo IDs next—photographs of every voter next to their name because they had gone through the registration process. And the list was constructed so that it could be used by a polling worker or a series of polling workers over the course of a 12-hour day, be flipped back and forth and not fall apart. Frankly, in my experience it was one of the best voter booklets I had ever seen.

Mr. SMITH. Including here, right?

Mr. SWEENEY. One of the best I had ever seen, sir. I don't choose to revise and extend.

Mr. SMITH. Okay.

Mr. SWEENEY. But it worked. And so if the electronic system didn't work, they had the official register of voters with photo IDs in a format that allowed every voter to be serviced by those poll workers. That's an example, if you will, of where technology was great when it worked and it was really impressive to see person after person put their thumbprint down, see their voter ID come up on that computer screen until the battery gave out. So these are some of the issues that you're dealing with. You noted generously in your testimony in your comments that IFES went out and purchased both cell phones, as well as SIM cards. Because of the late-

ness of the procurement by the IEBC on the cellular phones and the distribution of them, there were logistical issues in getting all of that out to all of the polling stations and there were training issues where frankly, I suspect, that some of the polling workers did not know how to put the new SIM cards into the old phones which resulted in problems. This is, quite frankly, not unforeseen, not a surprise. The Kenyan election law allowed both for a provisional vote system so that you had information for the first 3 days. That was always considered provisional and not official and then the election commission had 7 days to go through the process of a hand count of all of the materials as they came into Nairobi. That was all anticipated in the law, as was the period of the appeal process and judicial review. And these were all steps forward because of the disaster of 2007.

Mr. SMITH. It would appear, and all three of you can back this up one way or the other, that the IEBC had a very capable group of talented leaders who not only were well trained, but were also situation awareness types that got the job done, especially in light of the deadlines. You mentioned numerous political agendas. I'm not sure what that means, but you might want to speak to the importance of having very talented people that you saw on the job like at the IEBC in making this really happen. Because I have met with election commissions all over Africa, all over the world, frankly, and some leave a lot to be desired. They're handmade in the ruling party and they just do whatever the ruling party wants and when there's a contested election, they find more likely as we saw in Ethiopia in favor of what the ruling party wants. If you could speak to that, the talent.

Mr. SWEENEY. Mr. Chairman, if I can, first of all, if you looked at the criteria to become appointed a member of the IEBC, there were over 150 candidates considered by the Parliament. They had to produce their police records as to whether or not there were any arrests or liens, their income tax forms, all of their political activity. They had to swear not to run for office, I think, 5 to 7 years after this election. They took, to my way of thinking, probably the most difficult election commission to be a member of is India's, and they took the India standard, which only allows career civil servants who have got an unblemished record after 20 years of service to become members of the election commission. They took the Indian standard to a higher threshold.

And the amount of disclosure that these candidates for IEBC, all of the candidates have to submit to their Parliament for selection was by any standard simply amazing. Income tax forms, police forms, academic records, everything and then these men and women were selected and they were dedicated to fulfilling their mission to their country. I know almost all of the IEBC members having met with them individually and collectively a number of times over the last 3 years. It is a tremendous group of very committed public servants who come from all walks of life. There was a chemistry teacher from middle schools. There was a former Ambassador to the United States who had been a career public servant. There was a lawyer. There was an accountant. It was a tremendous group of people who have committed themselves to Kenya's democracy.

Mr. JENNINGS. Mr. Chairman, I would just add that all of the things that my colleague from IFES just said is true. However, this is a political process and there was a moment when the public confidence in the IEBC was lost. That's during the procurement process. There were accusations made of a number of the members and when the State House, the equivalent of the White House intervened, it created a problem. And that problem was difficult to overcome. We worked with the chairman for at least 5 years before he was even the chair of the Commission. So in terms of impugning someone's reputation that's not what I'm trying to point out here, because I think these are well-known public servants. But in the political process, whether it was true or not, a problem was created because of the procurement issue.

The second thing I would add, sir, is that while there were these flaws, we still have to look at the progress that has been made in Kenya, a significant progress, a revolutionary Constitution, the best—one of the best on the continent. Besides the Constitution itself, the reform of the courts and perhaps the reason that Raila Odinga went to the courts was because of the confidence people now have. And now the devolutionary process, 47 new states have been created with new assemblies.

So while the IEBC's vetting process took place, judges also had to be vetted. And this devolutionary process is very dynamic. It will be difficult for progress to be made in the short term and I think from the aid effect in this point of view that's one thing we have to watch. The short term pressures of an electoral process versus the long term sustainable development challenges that we face, especially in a country like Kenya that is the hub for security and communications and East Africa. If what we did was good enough to save one life, I don't think we should put a dollar value on it. And I think that in this particular case the Kenyan people are the ones who should be congratulated because they have made up their mind through their various peace campaigns that they were not going to go back to the violence of the past.

Mr. SMITH. Mr. Fagan.

Mr. FAGAN. I'll just speak quickly to this point because I believe my colleagues covered it very well. But I think Chairman Hassan did a good job. I saw him when he was in Nigeria for those elections observing just like me. So he took his role very seriously and even went to other African elections to see how other institutions were working. And I think that's an important thing for a lot of these chairmen of the election commissions to do is to get to know other elections on the continent. And Nigeria in 2011 was probably one of the best ones he could have witnessed.

As Dr. Jennings mentioned, prior to the election there was controversy. There was a crisis in their public image because of the biometric voter registration procurement issue. They probably could have done a much better job in communicating to people, but I think even in the last period between the election and the election results, they kept people informed. They told people about their mistakes. They kept people informed which was good. What we think is important, but what the Kenyan people believe is much more important. And you have about 50 percent of the population that probably very much respects the IEBC, but maybe slightly al-

most 50 percent that might not. We have to remember that other side of the country. So while they conducted themselves very well, we have to remember what the Kenyans think.

And we also have to remember not just the Presidential elections were held, Kenyans voted for five other elective positions. And I don't know the numbers, but very few challenges to those positions. So all in all, I would say a good elections process and a job done well by the IEBC. A lot of lessons learned, but a good job.

Mr. SMITH. Mr. Fagan, you said in your testimony that Prime Minister Odinga even commented that Kenya could not be run via Skype at The Hague in reference to the pending ICC trials against Kenyatta and his running mate. I'm wondering if the U.S. position on that, the warning that was issued earlier on, have any impact? Did it swing in either way? Was it a nonfactor, and people just decided on their own who it is that they wanted to support?

Mr. FAGAN. You know, I can't speak for Kenyans on whether the international community's position on the Presidential candidates impacted their votes. I think some people will say maybe that emboldened some people to vote more because they wanted to say this is a Kenyan election, this is our process, we don't want the interference of the international community. So it's hard to say whether or not the international community's stance which was never fully—they never fully endorsed one candidate over another, but certainly there were some statements made by officials from our Government and other EU governments which probably slightly favored one candidate over another. Just be careful how Kenyans voted because of the repercussions that could be made. But those repercussions we don't know yet. Both President Kenyatta and Vice President Ruto have been cooperating with the ICC. And as long as they cooperate, I think the U.S. Government and other governments will have to take that into consideration in how they deal with them.

When we look at Zimbabwe and we look at the sanctions on those leaders, the U.S. Government still deals with those leaders obviously. President Mugabe is not allowed in this country, but we still have an Ambassador there. We will have an Ambassador who has presented his credentials to Mugabe, so there are a lot of ways to deal with the Kenyan Government. And I think the United States will find ways to do that because it is such an important ally.

Mr. SMITH. Finally, the role of faith-based NGOs in civil society in promoting participation as well as nonviolence, and Dr. Jennings, I think your point made about needing to look beyond just the Presidential elections, that breakdown of Jubilee versus the Coalition for Reform in Democracy looks like there are a whole lot of contested elections with not an equal, but a very credible, outcome that people were picking and choosing rather effectively. They didn't just go for one side.

Mr. Fagan, you talked about how important it was for some to be at other elections like in Nigeria. Were there many other Africans, particularly those who were in the queue this year and next, observing and drawing some good lessons?

I know, Mr. Sweeney, you said there will be an event very soon on lessons learned. Please convey that if you would to the sub-

committee so we can send it out based on your insights and others as well. But if you touch on that, I'll yield to my friend, Ms. Bass.

Mr. JENNINGS. Thank you, Mr. Chairman. We can't forget how polarized this environment was. It was quite a volatile situation and so any advantage that either the major contestants could find, they would make use of. I think for the record we should state and understand President Obama's statement was very well received. It wasn't seen as being controversial at all. There were other statements that people tried to say contradicted President Obama's statement. And there was more of a nationalist tone of, "respect our sovereignty" position was taken by a number of the contestants.

It's understandable in a political situation that is as close as it was and everybody predicted. In fact, we thought there would be a runoff, but the numbers and the results proved that it's still a fairly divided country.

Let me just say on the faith-based participation, it was massive and there were calls for peace for more than a year. The calls were so resounding that many people said they had peace fatigue, but whether it was the churches or the mosques or the synagogues, everyone was calling for peace and that's what I was saying, referring to earlier, that it was the Kenyan people who had determined. Sadly, 19 deaths did take place. But compared to past electoral violence, not only 2007, but all the past elections, it's a very tiny amount of deaths.

With respect to the public, I think the role that the media played was significant. There were—people felt like they had clear choices here because of the role of the public debates that took place and they knew what they were voting for. And again, I think the numbers suggest that the society is fairly clear about which candidate they wanted to vote for.

Under this is something that we may be a bit uncomfortable discussing and that is the fact of ethnic divisions that exist within Kenya, but I think that Mr. Kenyatta and Mr. Ruto are together in an unlikely coalition and so they should be up to the task of managing the diversity of that country. And I think that's the lesson that again is something that can be shared with others in Africa. Thank you, sir.

Mr. SMITH. Thank you.

Mr. SWEENEY. Mr. Chairman, I'd just make two or three quick points. Number one, the election commissions in Africa have a history of observing each other's elections. There's a great deal of learning, a great deal of shared experiences. IFES and others help facilitate that. We had colleagues from the Liberian election commission as part of our team in Kenya. We hosted an evening of the South African, Nigerian, Liberian, and Kenyan election officials before the election so they could compare notes and then follow up afterwards. There were also a number of senior election administrators from a number of countries who were part of either the Commonwealth observation delegation or the European Union delegation. Former Chairman Quraishi of India who was very much a mentor to the Kenyan process was there as a member of the Commonwealth delegation. So within the industry, if you will, there was a great number of lessons learned from other experiences that

were then finally applied in Kenya, but there's never such a thing as a perfect election. So we know that some of those experiences will then show up in trainings and conferences in other countries. That's part of the election administration profession. So that was very robust, both before the Kenyan election, the IEBC members were very involved in learning from other societies and countries and that was evident in both the evolution and passage of five new election laws as well as other issues throughout the entire process.

Secondly, the issue that you raised was known to all Kenyan citizens. This was not a secret. It was a matter of public debate. They voted and they elected a team that was well aware of the questions raised by the ICC. This is not a secret, and it's up to Kenyans as to how they voted and how those campaigns projected that information out to their voters. No one was shy about it from what I could see. It was a matter of public debate.

My final point would be that we are already working with the Kenyan election commission looking at what went wrong, what went right, what we could do better. Some issues are in the law. Some issues were in the process of public procurement. Some issues were in communications. Every election commission that is professional takes a look at what happened last month and tries to figure out what is best. And today's Kenyan Supreme Court comments on the procurement process I'm sure will be part of the lessons learned.

Mr. SMITH. Ms. Bass?

Ms. BASS. Thank you very much, Mr. Chair. I just want to take where you were, just commenting Mr. Sweeney about no election is perfect. You know, I don't want to discount in any way, shape, or form the violence that took place this time and of course, the violence that took place the last time, but you know, from your testimony, I think that there's been a lot to be admired. I was joking with the chair, I don't know when we had an election turnout where there was 86 percent. I don't think we'd know what to do.

I do think we really do, and as a couple of the witnesses said, we need to look at this election in the context of a particular situation.

So I wanted to ask a few questions, I believe Dr. Jennings you were mentioning that there were no women that were elected as governor or to the upper chamber of the Parliament and that there were 96 female candidates. How many were elected though to other positions?

Mr. JENNINGS. Ms. Bass, let me clarify. There were none elected, but there were 18 who had been appointed in the Senate.

Ms. BASS. Oh, I see.

Mr. JENNINGS. But out of the 416 members of Parliament, 85 women are there. In the new constitutional arrangement, there was supposed to be——

Ms. BASS. Almost our ratio. I think it's a little more.

Mr. JENNINGS. About 17 percent in the U.S. Congress. But the point that we were making is that they weren't elected.

Ms. BASS. I understand. They were appointed. Okay. And in terms of the technology and machines, where were they made? Where were the voting machines from? The machines that you

were talking about that required the battery, electricity, where were they from?

Mr. SWEENEY. I don't know the exact source of where they were manufactured. The biometric identification system was done by a Canadian firm. The results transmission, I know the phones were primarily Nokia phones, but I can't tell you where they were manufactured. The voter registration process, I'll have to get back to you with the exact locales of the firms involved.

Ms. BASS. Okay, I'm interested in that and in particular because Dr. Jennings, you were pointing out the problems with procurement. Were you referring to the procurement of this technology or were there other procurement issues as well?

Mr. JENNINGS. The procurement of some of the technology that was just mentioned, yes.

Ms. BASS. In regard to the ICC, I wanted to know if you could—any of you, could speak to the views of the Kenyan public in general toward the ICC and then in particular, the specific case, the Kenyan case. And do you expect President Kenyatta and Deputy President Ruto to continue to comply? Aren't they due in the next couple of months to go before the ICC?

Mr. JENNINGS. The Vice President has a case at the end of May. And the President has to respond at the end of July.

Ms. BASS. Do you expect them to go?

Mr. JENNINGS. It's not an issue that NDI covers, ma'am. What I've mentioned earlier is that the polarization was, in part, a result of the fact that you had a contestant and his running mate that had been indicted by the ICC. And prior to the election process taking place, the visit by President—the Sudanese President to Kenya had become a big issue. So it's only in the political context that we were commenting on it, but NDI doesn't take a position on the ICC or whether or not the candidates will comply.

Ms. BASS. Okay, and I didn't mean you'd take a position. I just wanted to know your opinions. Maybe the other two witnesses can respond. What do you think is going to happen? Wasn't there an issue before as to whether the witnesses would show up, the witnesses that have made charges against both the President and Deputy.

Mr. FAGAN. Well, what I would say is just base it on what they, themselves, had said during the election campaign, during the two debates that took place. President Kenyatta, now President Kenyatta, then Deputy Prime Minister, indicated that he would continue to work with the ICC and attend the hearings, whether he and Vice President Ruto do that, we'll see. They have indicated they will cooperate. But if they go, I don't think we can base it on anything until they go. And that's when—yeah. So we'll have to see.

Mr. JENNINGS. In the President's inaugural address, he said that he will continue cooperate with international organizations.

Ms. BASS. Mr. Sweeney, did you want to say something?

Mr. SWEENEY. I would just take him at his word, ma'am.

Ms. BASS. Okay. What is your assessment of rumors that the new Kenyatta government may push for restrictions on civil society? Have you heard those rumors? Do you have any thoughts about them?

Mr. JENNINGS. Actually, it's an unfortunate situation. We are very concerned about space being maintained for civil society. The reforms that we are all congratulating the Kenyans about actually were largely a result of active civil society pushing for these reforms for more than two decades. There's a bill that was recently adopted and it just coincides with the election of President Kenyatta, but that bill was promulgated prior to his election which does close space.

Just recently as in yesterday, more than 8,500 civil society organizations have reapplied for their registration. And one of the things that we have said and we would hope that the new government would pay attention to is that as long as there is space for a vibrant civil society, then it is possible that these reforms can be achieved. And that is the real measure of whether or not the investments made by governments like the United States or other governments was worth the investment or not because that's at the end of the day, whether the Kenyan people can live in a democratic society and there's an inclusive social and economic development process is the real measure of what we do.

Ms. BASS. Can you tell me what you think Odinga's role will be now? Especially when I was looking at the ratios in terms of the majority and minority parties, they're almost neck and neck. Does he continue to play a leading role in opposition even though he lost the election? What do you anticipate from him?

Mr. FAGAN. Raila Odinga has been in politics his whole life.

Ms. BASS. Right.

Mr. FAGAN. His father was the first Vice President. Kenyatta's father was the first President.

Ms. BASS. Right.

Mr. FAGAN. So historically, he's been connected to the politics of that country since probably his birth. So I would expect Raila Odinga to continue to play a prominent role in politics. Will he run for President again? I don't know. Anything is possible.

If you look at history, if you look at Raila Odinga, if you look at the major political actors over the past, I would say even two decades, they reinvent themselves. They join different political parties——

Ms. BASS. We know about that, too.

Mr. FAGAN. There's a lot of party hopping. He joined KANU as the ruling party. He was thrown in jail under KANU and President Moi. I think Raila Odinga plays an important role in Kenya. He's a leader of one of the largest ethnic communities, but he's also a leader of many different political parties in the past and probably in the future. So he will continue to play a major role in this whole process. I don't doubt it. And I think maybe Dr. Jennings had mentioned this. President Kenyatta and Vice President Ruto were completely at odds in the last election.

Ms. BASS. Right.

Mr. FAGAN. So anything can happen in Kenyan politics. So I can't predict who is going to be doing what probably in the next 5 years or 2 years because these alliances could change very quickly.

Ms. BASS. I know a number of the news reports this being his third try that he probably wouldn't run again.

Mr. JENNINGS. Ms. Bass, I would say that as Mr. Sweeney said about Kenyatta, take him at his word, I think we can definitely take Raila Odinga at his word. During his congratulatory remarks to Mr. Kenyatta, he said we are now the official opposition. I think that he is an African leader, is well known on the continent of Africa, and he's been active as Paul mentioned for more than four decades. He's an international figure.

Our understanding is that he's met twice already with Uhuru Kenyatta. What they talked about I have no way of knowing, but it would seem to me that to walk away from the numbers that I just read might not make sense.

Ms. BASS. Right.

Mr. JENNINGS. Now that doesn't mean that Ban Ki-moon won't offer him a position or something. I don't know. But it would seem that wherever he is in this world that I think he is a committed democratic activist and he wants to see Kenya be democratic.

There's a saying that Africa doesn't need big men, that it just needs strong institutions. I would amend that a little bit. I do believe that Africa needs good statesmen and good stateswomen and I think that what Raila Odinga did showed that he's a statesman and hopefully he'll continue to play that role.

Mr. SWEENEY. I have to agree with my colleagues. You look at his family. You look at his background. You look at everything the he's done in his life and it is very, very hard to imagine him not continuing to have an impact on Kenyan politics. But what that role and title will be, I think it will be up to his invention.

Ms. BASS. Thank you. Thank you very much, Mr. Chair.

Mr. SMITH. Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman, and I thank each of you for coming to testify today.

Mr. Fagan, I'd like to start with you. You mentioned in your testimony about the political parties are still in need of reform as they are really not based on a platform or ideological point of view. Do you think locally politicians understand that that need for reform and I guess the second follow up to that is do you see that improving or changing?

Mr. FAGAN. I'm not pessimistic about the parties in Kenya, but if you do look at them from a holistic approach, especially in the past two election cycles, politicians jump from one political party to another.

Under the 2002 elections, most of them coalesced around the NARC Coalition, basically to defeat KANU and Uhuru Kenyatta in his first attempt at the presidency. So politics is a game of coalition building. And in and of itself is not a bad thing, but these political parties tend to be led by individuals that are driven by ethnic groupings. But when I think about these elections and even through these political parties, there's a lot of basis on ethnicity and where they come from and that's part of the calculus when putting these coalitions together, can we get the Luo population, can we get the Luhya population, can we get the Kalenjin population, which populations can we get? Can we get the Coast? Those calculations certainly go into it.

But what I think what we saw in these elections was a lot of talk about issues, certainly. And I don't want to just keep on bringing

up the Presidential debate, but that was historic, having two Presidential debates. And these debates, they put our debates to shame, no offense to President Obama or Governor Romney, but you knew exactly what they were going to say. These guys were going at each other, talking about the most troubling issues facing Kenya, the ICC, land issues, the issues that really matter to Kenyans. So I'm positive and optimistic that the political parties will be reformed. There needs to be a lot done on the internal processes.

Mr. MEADOWS. So are you suggesting that as we reform those, the Presidential debates will become more like ours?

Mr. FAGAN. We'll see.

Mr. MEADOWS. I hope not.

Mr. FAGAN. I hope not either. It was very refreshing to watch the debates, but I think the parties have a long way to go in the area of internal party democracy ensuring that more people are able to get to those elected positions fairly. There's a lot of money that goes around. Women were left out of the process quite a bit. So there needs to be a lot more done in the area of political party reform, especially in the area of financial reform.

Mr. MEADOWS. And so as we look at that, are you saying that that's part of our focus is to help them with the reform and their political parties? Because that's a pretty far reach. We're taking really a world view in a society that culturally has been that way for a lot longer than we've been in existence in trying to say okay, we want you to be devoid of that and now all of a sudden support a platform and become political. Is that—I'll let each one of you. Dr. Jennings, can you comment on that?

Mr. JENNINGS. I'd love to, sir. We've been working with political parties in Kenya specifically for the last 5 years. I think they've made tremendous progress. They may not necessarily be ideologically driven, but the issues now are being addressed more and more. They have put forth manifestos that did not come from some consultant somewhere who was hired to put it together for them. The parties are debating. One of the parties whose candidate was—in fact, the only woman running for President, their party was perhaps one of the best organized parties in Kenya. The TNA, Uhuru Kenyatta's party, those were real parties. I'm sure that if I was Kenyatta I would be trying to attract people to my side, too, when you look at the numbers within Parliament.

I think it is an area that U.S. Government funding should continue. The work that we've done as a party institute is to try to support the building of more democratically-structured parties. And we've run campaigns that stick to the issues. If I vote for you because you're from my village, or from my neighborhood and I don't have water, well, what good is that to me if my real issue is having clean water and some sanitation. So by raising real issues it allows the political parties to be closer to the people and to structured a little bit differently. I think it is an appropriate area for U.S. Government support.

Mr. MEADOWS. Mr. Sweeney?

Mr. SWEENEY. I'm going to answer this first from the IFES perspective and then the second from a personal perspective if I may indulge you.

Mr. MEADOWS. Sure.

Mr. SWEENEY. From the IFES perspective, we work with the election management bodies. We leave the working with political parties to the party institutes and to other organizations like that around the world.

On a personal basis, I worked with Chairman Fascell many, many years ago to help create the National Endowment for Democracy and the idea was that the political party model was something that we wanted to introduce as a country, as a philosophy into newly-emerging democratic systems. And by and large, I would argue that the introduction of the democratic model and the political party system as a way of organizing has served many countries very, very well and I commend the work of both the Republican and the Democratic and the German and the Austrian and a whole variety of other countries as they introduce their party models.

Now speaking as someone who spent a decade working for a political party with the closeness of these numbers and the history of Kenya's moving alliances, it wouldn't surprise me if there's not going to be a fair amount of political reform in the next few years by the political parties as they try and address the electorate at the next election. And that's how it should be. And as long as that process is open and free and clear, that's one of the reasons why the National Endowment was created by the Congress after President Reagan's speech at Westminster that we're all remembering because of Mrs. Thatcher's funeral and it's an investment that's been paid off very, very well for by the democracies around the world that have invested in that dialogue in my judgment.

Mr. MEADOWS. is there a danger where we look at the sovereignty of a nation like Kenya or any others and where we come in and try to assist them in that process where we infiltrate their world view? I don't sense that, but just thought I would——

Mr. SWEENEY. If I may respond, yes, there is the danger. But you're also dealing with the professional politicians of a country.

Mr. MEADOWS. Right.

Mr. SWEENEY. And they tend to be able to speak up for their country, for their country men and women, for their own interests. These are not—these are professional politicians.

Mr. MEADOWS. Sure.

Mr. SWEENEY. If you as an outsider, even in terms of our work with the technical side of running an election, if you cross over the line, you get pushed back. Your advice is not followed. You are no longer welcome and I suspect that's true of political party work as well.

Mr. MEADOWS. Mr. Fagan?

Mr. FAGAN. What I would say in the case of Kenya in particular is when we're working with political parties and we haven't worked with political parties during this election cycle. NDI has done that much more, is that we'd be working with them on trying to follow their own laws.

Mr. MEADOWS. Right.

Mr. FAGAN. So it's not as if we're trying to influence them on their ideology or what not. We're just trying to help them follow their own laws when——

Mr. MEADOWS. Undergirding the rule of law and the importance thereof.

Mr. FAGAN. Exactly.

Mr. JENNINGS. Mr. Meadows, it's important, the point that you raised, it can be perceived as imposition and so how you engage and how you work is very important. You have to adopt culture, the appropriate methods. We have to make sure that mutual respect, all of the principles of effective aid, respect for the host countries, understanding of who you are even.

And the point that I was making earlier about tremendous progress, there were 33,000 polling streams and the Kenyan political parties, the two main parties, covered 80 percent of those or more. So the level of organization is there and they do want to learn from us, especially because Kenya is a hub for information and communications technology and innovations that have been made by the political parties, especially in the last two elections, they do want to understand that. So I think it's how we engage more than any kind of pushback on imposition.

Mr. MEADOWS. Well said. Mr. Chairman, do I have time for one more question? Okay.

Mr. Fagan, you mentioned the importance, I think in your testimony, of civic and nongovernmental organizations as they affected the voting, the role of the voters and education. What do you see as the greatest threat to that involvement of those NGOs or civic organizations because you said you know, we need to continue to grow that and there seemed to be an implication that if we didn't have that, then the whole system would be undermined. What do you see as the greatest threat?

Mr. FAGAN. Well, I don't think there would be a threat to our continued support to civil society. In fact, I think civil society plays a huge and important role in Kenyan society. And when I say civil society, I'm also including faith-based groups. This includes churches, mosques, and other groups that provide services to Kenyans in general when the government cannot.

We work very closely with civic organizations throughout the country. I don't know how many counties our staff covered, but we trained directly 50,000 Kenyans. Our staff of about six to seven people training, going throughout the country and training people on what the election means, the whole devolution process, 50,000 people. And that doesn't include what we call our training of trainers programs which probably impacted hundreds of thousands and the radio programs that we sponsored which we hope millions of people listen to.

So our support, whether it's through IRI, through the National Endowment for Democracy or the USAID, it's invaluable and right now I think the question was asked about this PBO, this public benefit law.

Mr. MEADOWS. Right.

Mr. FAGAN. We don't know what kind of impact that will actually have on civic organizations. But the country that's being thrown around and I don't necessary believe this, is Ethiopia. Ethiopia has very strong laws against civic organizations and foreign funding. And we hope that doesn't happen in the Kenyan case.

Civic organizations play an enormous role in Kenya. They were prominent in bringing multi-party democracy to Kenya in 1992.

Mr. MEADOWS. Right.

Mr. FAGAN. So they're very important.

Mr. MEADOWS. So that would be the threat is to follow "the Ethiopian model" that may or may not be active.

Mr. FAGAN. I hope not.

Mr. MEADOWS. Okay, thank you. And I'll yield back to the chair, but I would ask if any of you have for your testimony, when you talk about the public procurement issues and what would be some of those issues that you could respond to the committee and let us know anything that needs to be highlighted and looked at from a congressional standpoint that would be very welcome. I thank each of you for your testimony and I yield back to the chairman.

Mr. SMITH. Mr. Meadows, thank you so very much. I would just note parenthetically that speaking about political parties, most of us have seen the absence of it in the chaos it produces when there isn't a family. And when there is a two-party system, yes, other parties should participate but very often things don't happen. Governance is set back and it often leads to chaos. But I would note that Greg Simpkins was the Deputy Regional Director for IRI back in the early 1990s working on just that, building political parties. So on this committee, we're very appreciative to have him as our top African expert on the subcommittee.

I'd like to now yield to the vice chairman of the committee, Mr. Weber, the gentleman from Texas.

Mr. WEBER. Thank you, Mr. Chairman, and following up your remarks about the absence of political parties that's probably why Mark Twain said he didn't vote for politicians because it just encouraged them. Maybe he was on to something there.

Mr. Fagan, I've got some questions for you. Was IRI, well, actually, these are questions for all three of you. Was IRI involved in the 2007 election?

Mr. FAGAN. We had a program there, yes.

Mr. WEBER. You had a program. How about you, Dr. Jennings?

Mr. JENNINGS. Yes, sir. We did not have a big program, but we were there.

Mr. WEBER. Mr. Sweeney?

Mr. SWEENEY. We had a modest program as well.

Mr. WEBER. Okay. At what point were you—you may have never left. These are questions for all three of you again. At what point were you all able to come back in. I mean there was a lot of violence. Did you have to exit because of that violence?

Mr. FAGAN. No. Staff was there through it. We've had a permanent presence on the ground since 2002. So there was no exodus whatsoever.

Mr. WEBER. So you all have been there the whole time.

Mr. FAGAN. Right.

Mr. WEBER. Dr. Jennings?

Mr. JENNINGS. We did not evacuate our staff, but we were in touch. We only had a small staff of about five or six people. We were in touch with them on a regular basis during that period.

Mr. WEBER. Okay. Mr. Sweeney?

Mr. SWEENEY. Same.

Mr. WEBER. So it's safe to say that you all remained on the ground there during the last 6 years. At what point did you gear up to start ensuring that the 2013 elections were different?

Mr. JENNINGS. In our case, shortly after we saw that the international observation failed, there were not civil society groups that were observing the election, and we thought that if there was a Parallel Vote Tabulation in 2007, maybe some of the violence could have been avoided. So we set out in our conversations with USAID and other development partners to say for the 2013 elections we think this is what needs to be done.

Mr. WEBER. When was that, was that in 2008, 2010?

Mr. JENNINGS. Yes, in 2008.

Mr. WEBER. 2008.

Mr. JENNINGS. We have a presence in Kenya since the mid-1990s.

Mr. WEBER. Okay, I'm specifically focusing between the time of the 2007 to 2013.

Mr. Sweeney, how about IFES?

Mr. SWEENEY. IFES was involved with—in dialogue with the election commission as it was being organized. They participated in our November 2010 election program here in the United States. Our meetings continued and I would say we staffed up in a major way and started a major program in the summer of 2011.

Mr. WEBER. Okay, so you all did not leave. You all were there and you had a presence on the ground and you started 2007, 2008.

And Mr. Fagan, when did you start gearing up for 2013?

Mr. FAGAN. We had continuous programs, so as soon as the violence died down and what not, we continued doing our work with our partners which at the time was mainly with Parliament, members of Parliament.

Mr. WEBER. Okay. So one of the complaints I heard you all testify about was the procurement process that it didn't go smoothly, it didn't run well. And if you all were there for so long, why didn't you all help them begin that process early, early on?

Mr. SWEENEY. I think the issues were mostly around the election commission's procurements. We did advise the election commission on a number of options. There were a number of procurements that took place. Some of those procurements became controversial, not all of them. The election commission followed it's own procedures on many. On some it frankly ran into some difficulties within their own government.

Mr. WEBER. Were they short funding?

Mr. SWEENEY. I'd have to check on the funding issue. Because we're dealing with a multiple of issues that created the perception that my colleague referenced.

Mr. WEBER. Okay, and Mr. Fagan, you said that women were supposed to be the big winners.

Mr. FAGAN. Right.

Mr. WEBER. But they really weren't. Number one, why were they supposed to be, and number two, why weren't they?

Mr. FAGAN. Well, under the new Constitution, they're supposed to have at least one third representation within all the legislative bodies and the courts actually ruled that this can be gradually implemented and not implemented——

Mr. WEBER. Okay, so the numbers just aren't there yet.

Mr. FAGAN. Correct.

Mr. WEBER. Okay. You also stated that Kenya benefitted from other international donors during your testimony. What other donors were you talking about?

Mr. FAGAN. I probably will let Keith talk more about that because we only had U.S. Government funding.

Mr. WEBER. Okay.

Mr. JENNINGS. The European donors, the Norwegian Ministry of Foreign Affairs, the Dutch, the British also were very—through their development organizations, they were very involved and may have been the largest contributor to the Kenya electoral process.

Mr. WEBER. Any Chinese money?

Mr. JENNINGS. No. I think the Chinese position is that we are not involved in the political process. And that's based on my knowledge what takes place in other places——

Mr. WEBER. Above board, at least.

Mr. JENNINGS. Yes.

Mr. WEBER. I'm getting back to what my colleague over here, Mr. Meadows said, what's the biggest threat? I'm trying to see if there's any other outside influences trying to come in and play in this arena.

I think I hear you say, Dr. Jennings——

Mr. JENNINGS. Well, the Chinese are very present and that's one of the issues that may have been fueling some of the more nationalist tendencies because there seems to be an alternative to the West. The Chinese were the first to congratulate Mr. Uhuru on his victory, even before the courts had ruled.

Mr. WEBER. Okay. Mr. Sweeney, you said that the elections were a process and not an event, I think was the way you stated that. There was a list that you said, the official paper list, when the electronics kind of bit the dust so to speak and someone maintained an official list. Who maintained that official list?

Mr. SWEENEY. The IEBC developed the voter list as part of the voter registration process. The list I referenced was a paper list that had photo identification that came off of the voter registration process so that if a voter came to a polling station and they were not using the computer-based biometric registration which was triggered by a thumbprint, they could then go to the official paper list and find that voter's information and that's what I was referencing, sir.

Mr. WEBER. And pardon my lack of knowledge on Kenya, do they all speak the same language?

Mr. SWEENEY. Yes and no. The official languages are English and Swahili, but there are many, there are about 40 to 50 tribal languages as well.

Mr. WEBER. Right, okay.

Mr. SWEENEY. And in some places it differs in the level of fluency in those.

Mr. WEBER. Also, Mr. Sweeney, you said that the election law allowed for provisional ballots.

Mr. SWEENEY. No, there was provisional reporting.

Mr. WEBER. Provisional reporting.

Mr. SWEENEY. The way the system worked was on election night, they would count for the Presidential and they could report that count by cell phone to the national tally center.

Mr. WEBER. I got you.

Mr. SWEENEY. That provisional number was then made public, okay? To the media, to the political parties. However, that was subject to change.

Mr. WEBER. Subject to change. Here's my question about that.

Mr. SWEENEY. Yes, sir.

Mr. WEBER. How long was that law, if you will, or that ability to provisionally report in place? Did that exist in the 2007 election?

Mr. SWEENEY. It did not exist in the 2007 election. The provisional results were accepted and broadcast by the election commission for 3 days following the election. Then the election commission announced that the provisional reporting system, which they were not satisfied with, was ending and now they were going to the official count. And the official count was reviewing the paper ballots and the election forms submitted by each polling station and then announcing those official results and they announced those official results over the course of the next 4-4½ days until they declared that they did not need to go to a runoff.

Mr. WEBER. Okay, I got you. And so I think it might have been you, Mr. Fagan, who said—I'm trying to remember multiple testimonies here, who said you think about 51 percent of the country, or maybe it was you, Dr. Jennings, believes in the system? I see the monkey getting on your back, Mr. Fagan.

Mr. FAGAN. I only said that because there was just over 50 percent of the population that voted for Uhuru Kenyatta.

Mr. WEBER. So you're going strictly by voting numbers.

Mr. FAGAN. Correct.

Mr. WEBER. And then also, Mr. Sweeney, you said IEBC candidates were selected by the Parliament.

Mr. SWEENEY. Yes, sir.

Mr. WEBER. Two questions. How many are on the IEBC, number one, and is there that kind of faith in that board as well, on that commission?

Mr. SWEENEY. First of all, I believe it's an 11-person commission, but let me double check that for you.

Mr. WEBER. Okay.

Mr. SWEENEY. There were well over 150 candidates who applied for consideration to the Parliament. The Parliament had a specific screening committee and went through an exhaustive process to finally bring candidates before the Parliament to be voted on.

Mr. WEBER. High level integrity, better than the India model I think you said.

Mr. SWEENEY. That's what I said, sir. Yes, sir.

Mr. WEBER. Is there faith in the country in that process or were there cries of corruption, cronyism, favoritism?

Mr. SWEENEY. No, sir. I think the country was more than willing to entrust the IEBC with the responsibility for conducting the election. There was a number of public flurries around some procurement issues. There was some dissatisfaction when the provisional vote system did not work as well as expected. As one who was in some of those meetings, I can tell you the IEBC Commissioners and staff were even more dissatisfied than what was on the news media. But by and large, I think the country and after they went through the process which was established by the law, the Su-

preme Court was able to review all of that and Kenyans were able to credibly accept the results.

Mr. WEBER. Okay, and last question for you on that subject is—is there a—I started my questioning with you guys, how long were you there? Why didn't you act sooner, basically? We want to be gearing up perhaps for next elections. When is that?

Mr. JENNINGS. 2017.

Mr. WEBER. 2017.

Mr. SWEENEY. The next elections are 2017.

Mr. WEBER. Is there a process in place with IEBC so that they're holding forums, whether it's town halls, public meetings? Do they hold their meetings openly? And are Kenyans getting in a chance to buy in and participate?

Mr. SWEENEY. As I said in my testimony, we're already in the process of planning the first meeting with the IEBC on the lessons learned and how do we go forward. Every election inevitably produces a set of reforms, some of which are legislative, some of which are administrative, some of which are simply practices.

Mr. WEBER. Okay.

Mr. SWEENEY. And I suspect all of that will be developed now that the court has ruled and the process is moving forward.

Mr. WEBER. And that will be in the public domain?

Mr. SWEENEY. Yes, sir.

Mr. WEBER. Okay. And then the last question, Dr. Jennings, you said that the judges had to be vetted.

Mr. JENNINGS. Yes, sir.

Mr. WEBER. By who?

Mr. JENNINGS. It was a public process that included people drawn from a number of places, but ultimately it was the Parliament.

Mr. WEBER. Okay.

Mr. JENNINGS. Mr. Weber, let me just go back to one thing that you raised. Part of the reason that those of us who were not working with the IEBC raised this issue of the procurement, it was because they had the highest approval rating of any institution in the country. And so many Kenyans felt let down because they had invested so much confidence in the IEBC. And in the pre-election period, it was critical because of this polarization. So we're not attacking IEBC as being incompetent or as perhaps being corrupt. But it was the public perception and that way only because such a high standard had been held. And they had performed so well during the constitutional reform process. So I think it was the politics of the political environment that caused people to have less confidence. And the reason that this electoral reform issue is so important is because it's what now the opposition Raila Odinga has raised in his court challenge. That some of the counties, we should know soon, once the IEBC releases the official forms, may have voted more than 100 percent. We do know officially, 17 counties voted in the 90 percent rate. And that's why you have such an almost 6 million versus 5½ million.

Mr. WEBER. I get that, when you talked about the procurement process. I think it was Mr. Sweeney in his remarks said that when you try to institute electronic, I forget how he said it, voting or whatever, a lot tried to be done in a short amount of time, basi-

cally. And so all I'm driving at is we want to make sure we have a policy in place that says by golly, they ought to be instituting that right now. They ought to be going back to that process, rebuilding that confidence and making sure this process is in place. That's what my questions were aimed at. Thank you.

Mr. Chairman, I yield back.

Mr. SMITH. Thank you very much, Mr. Weber. Before I conclude, I just want to ask in your view will any of the election laws which obviously have been done very quickly have to be revisited and updates provided pursuant to lessons learned? And secondly, Mr. Sweeney, in your testimony you mentioned that election technology helps mitigate certain types of fraud, but it also opens the door to more technologically advanced forms of fraud. Perhaps you might want to elaborate on that and then we'll conclude.

Mr. SWEENEY. Thank you, Mr. Chairman. First of all, every election that I've seen results in an agenda for change for the next election. There will always be improvements in the process, and that's healthy. And I suspect that there will—I already know that there's discussion as to what parts of the Kenyan election law and regulation and process need to be changed, need to be looked at. And they will be looked at in a completely public way so as to maintain public trust and the integrity of the election process.

In my testimony, I make the point that technology oftentimes has unanticipated consequences. And thus the stupidest way to try and steal an election is through ballot stuffing. Far better to figure out how to program the computers on results which is done far away.

Now I will also say that we had some of the world's best experts in the computer process around elections so as to make certain that the Kenyan process was completely protected, contained, safe both from rumors about being hacked into and the reality of being hacked into. But you can see over time people try and think they're smarter than other systems.

The one thing I would caution people about is not to live by anecdote. When you're living at trying to shift the outcome of a national election, you're not talking about one or two examples of voter fraud. You've got to find hundreds of thousands of votes cast. And in the case of Kenya, the IEBC spent months working to make sure that such errors, be they administrative and simply clerks writing down the wrong number, or deliberate, could not happen and that there was accountability. In the election forum per polling station, you had not only the signatures of all the election officials present who had management responsibilities, but all the party observers present by party, attesting to the fact that the number that was going on those forms were the numbers that they had all witnessed. And they were all under penalty of criminal law if they were lying. It was a very, very robust system. Very well thought out and then very well executed.

Mr. SMITH. Thank you.

Mr. JENNINGS. Mr. Chairman, let me first say thank you for holding this hearing and giving us an opportunity to comment. I do think that the reason I said in the beginning of my statement that elections are political processes is precisely because of this. If you have a polarized political environment with one side getting

5½ million votes and another getting over 6 million, and the difference is 8,000 votes, our level of confidence in the Kenyan people's level of confidence has to be absolute, especially when the board that was in the Bomas returning center didn't add up. And so the logical thing for one side that's committed to the democratic process is to go to court. It was a legitimate decision by Odinga.

Having said that, it is now up to those who have been elected and certified by the Supreme Court to continue to reform process. In my estimation, the electoral reform that is most needed is to the legal framework. There were a number of things unanswered. But I would also say and I'm sure that will be done because I know we're meeting with the political parties and that's on the agenda, but I would also say that this issue of space for civil society is one of the most critical things, but perhaps of all of the things the U.S. is well positioned, given our Federal system, to assist the Kenyans with is the devolution process. And I think there's a lot that can be learned whether it's the National Governors Association or the National Association of State and County and Local Officials that can be shared and that would make sense in this context.

But I think that we have the luxury of sitting here. I'm not a politician. I don't have anything against politicians either, but I think in the heat of the moment in Kenya, the way that this election was handled and the role of the Supreme Court was absolutely critical and I think now people are willing to work together to move on for the future of that country.

Mr. FAGAN. Just getting back quickly to Mr. Weber's point of time, when looking at these elections of the next elections, now is the time to act. And I would echo what Dr. Jennings said especially in the area of where we should really look at our assistance would be on this devolution process and making sure it works. I know the ring gets larger. But also getting back to your point, about the laws, the electoral laws, I think it's a lot about enforcing the laws. A lot changed since 2010 with the new Constitution and therefore those laws need to be implemented, especially in the area of political party reform. We saw in the primaries they went—they didn't go as well as they could have. Parties missed deadlines, etcetera. So we really need or they need to really focus on just implementing their own laws. What else is there? But it is a constant process. I mean this is the first election held under this new Constitution and new framework. Obviously, changes will need to be reviewed and assessed. But I would implore upon them that they need to do it now rather than wait until 18 months before an election.

Mr. SMITH. Thank you. We will conclude the hearing. I do want to thank you for your extraordinary expertise. We benefit here, but most importantly people on the ground in Kenya and elsewhere are the greatest beneficiaries, so thank you for your leadership. Thank you for spending the better part of this afternoon conveying all of this wisdom to this subcommittee which we will use it and do our very best to see that you and your efforts are adequately resourced, particularly in these tough budget times. So thank you so very, very much and the hearing is adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128

Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations
Christopher H. Smith (R-NJ), Chairman

April 11, 2013

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at www.foreignaffairs.house.gov):

DATE: Tuesday, April 16, 2013

TIME: 2:00 p.m.

SUBJECT: Kenya's 2013 Elections: An Effective Assistance Model?

WITNESSES: Mr. Paul Fagan
Regional Director for Africa
International Republican Institute

Keith Jennings, Ph.D.
Senior Associate and Regional Director for Southern and East Africa
National Democratic Institute

Mr. Bill Sweeney
President and Chief Executive Officer
International Foundation for Electoral Systems

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, Global Human Rights, and International Organizations* HEARING

Day *Tuesday* **Date** *April 16, 2013* **Room** *2172 Rayburn HOB*

Starting Time *2:30 p.m.* **Ending Time** *4:15 p.m.*

Recesses [*0*] (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session [✓]
Executive (closed) Session [ ]
Televised [✓]

Electronically Recorded (taped) [✓]
Stenographic Record [✓]

TITLE OF HEARING:

Kenya's 2013 Elections: An Effective Assistance Model?

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Karen Bass, Rep. Mark Meadows, Rep. Randy Weber

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

HEARING WITNESSES: Same as meeting notice attached? Yes [✓] **No** [ ]
(If "no", please list below and include title, agency, department, or organization.)

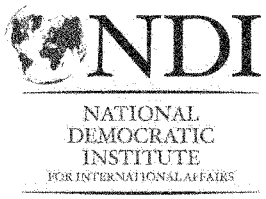
STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Information on Kenya and the election submitted by Dr. Jennings

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *4:15 p.m.*

Sheri Rickert
Subcommittee Staff Director

MATERIAL SUBMITTED FOR THE RECORD BY KEITH JENNINGS, PH.D., SENIOR ASSOCIATE AND REGIONAL DIRECTOR FOR SOUTHERN AND EAST AFRICA, NATIONAL DEMOCRATIC INSTITUTE



Kenya

Political Situation

On March 4, 2013, Kenya held its first elections since 2007, when post-election violence resulted in 1,500 deaths and the displacement of more than 600,000. Despite some flaws in the electoral process, domestic and international election observers characterized the polls as mostly credible. The elections marked the first polls since the passage of a new constitution in August 2010, which introduced sweeping changes to the political system, including: the creation of a new devolved system of government that transfers authority for many government functions from the national level to 47 newly-created counties; reduced presidential powers; the introduction of a bicameral system; the introduction of majority and minority parties in the national assembly; a more defined separation of powers between the three branches of government; electoral reforms; a restructured judiciary; security sector and land reforms; affirmative action for under-represented groups; and an expanded bill of rights.

Many political and logistical obstacles will have to be overcome to ensure the successful implementation of the constitution and associated legislation, especially during the transition to devolved government. While progress has been made to provide some of the necessary foundations for general elections and the devolution process, the overall reform process has been marked by delays and uncertainties. The political polarization that was evident in the pre-election period has continued into the post-election period, and may pose challenges during the transition to devolution.

The success of devolution in Kenya will depend on the extent to which political leaders understand and respond to citizens' concerns, share information freely, solicit feedback about their own performance, and respect the rights of minority populations. Going forward, government institutions, civil society, political parties and citizens face a challenging period as they prepare for devolution, and Kenyan leaders are under increasing pressure to continue rebuilding their country and avoid a repeat of the 2007 post-election crisis.

Current Activities

NDI has supported Kenyan efforts to strengthen democratic institutions and advance democratic reforms since 1993. Programs initially provided skills training to women interested in politics and worked with nonpartisan civic groups to monitor elections. Since 2001, NDI and its local partners have benefitted from the support of various donors, including the United States Agency for International Development (USAID), the Royal Norwegian Ministry of Foreign Affairs, the Kingdom of the Netherlands Ministry of Foreign Affairs, the United Nations Development Programme, the National Endowment for Democracy (NED), the British Department for International Development (DFID) and the British Foreign Office.

Political Parties

NDI has helped Kenya's major political parties build consensus on issues of national importance, engage in dialogue with each other and the election commission, comply with the new constitution, and enhance their ability to represent citizens' interests. NDI's assistance has helped political parties improve their understanding of the needs and priorities of Kenyan citizens to develop representative, issue-based policy platforms.

Through work with parties and civil society, NDI also is helping women and young people overcome barriers to political participation. The Institute supports the Inter-Party Youth Forum, which brings together youth from the main political parties in Kenya. NDI also helped women candidates share their platforms through radio programs during the nomination period; nine of these women went on to be elected during the March 4 polls.

NDI has contributed to the constitutional implementation process by supporting the participation of political parties and civil society organizations in discussions on what should be included in new legislation being debated in parliament. The Institute supported improved communications between political party leadership and the electoral commission during the reform process through the creation of political party liaison committees (PPLC). The PPLCs have been established nationally and in each of the 47 counties and provide a venue for regular dialogue on contentious issues during constitutional implementation. An NDI Leadership and Campaign Academy was created in 2011 to equip potential candidates with the knowledge and skills to run successful campaigns and become strong leaders once elected. It has trained 1,688 potential candidates, including more than 700 women. A manual accompanying the training has reached thousands more. On election day, 50 LCA graduates were elected into office in Kenya.

Election Observation

In addition to its work with political parties, NDI works with the Kenyan Election Observation Group (ELOG), a coalition of 11 civil society organizations, to independently monitor electoral and political processes. Since its inception in 2010, NDI has worked with ELOG to strengthen its capacity as a long-term, systematic domestic monitoring organization. Ahead of the 2013 polls, NDI supported ELOG to deploy 542 long-term observers in July 2012 to provide analysis and information about the electoral environment in the months before the elections. NDI also worked with ELOG member organizations to conduct monitoring in four thematic areas: women's participation; campaign finance legislation; politically-motivated violence; and auditing and updating the voter registry.

In May 2012, NDI hosted a pre-election delegation to Kenya to consider the state of electoral preparedness, review the broader political environment, examine factors that could affect the credibility of the electoral process, and offer recommendations to support increased dialogue and consensus building toward peaceful, credible elections. The delegation found that remarkable progress has been made in reforming Kenya's election laws, and it developed a set of 44 recommendations to the electoral commission, political parties, religious and civil society leaders, and citizens to remove uncertainties that could threaten the integrity of the elections.

On election day, with NDI support, ELOG deployed approximately 1,500 trained, accredited, nonpartisan rapid response monitors to a statistically representative sample of polling stations to conduct a parallel vote tabulation. During election week, ELOG released statements with information from PVT observers on the opening of polls, the voting process, and the vote tallying process. Following the release of the official election results, ELOG released a final statement verifying that the official results fell within the PVT projected ranges for each candidate.

The Official Results are Consistent with Elections Observation Group's Parallel Vote Tabulation (PVT)

9th March 2013

Background

The Elections Observation Group (ELOG) is a permanent national platform composed of civil society and faith-based organizations committed to promote citizen participation in the electoral processes, through non-partisan, impartial domestic observation and objective reporting of elections.

ELOG has been closely monitoring the pre election environment processes since June 2012 during which 542 long term observers were deployed to observe and report on the pre-election environment. Our primary goal in collecting this valuable information is to contribute to a peaceful election and to enhance the integrity of the election process.

We deployed 580 constituency supervisors and over 7000 observers in all the 290 constituencies. Out of these, approximately 1000 were deployed as Parallel Vote Tabulation (PVT) observers in sampled polling stations to enable ELOG to confidently comment on electoral processes and also provide an independent verification of the results announced by the Independent Electoral and Boundaries Commission (IEBC). The PVT observers were deployed to a nationally representative sample of polling streams in all of the 290 constituencies.

PVT involves deploying highly trained, accredited observers to a representative random sample of polling streams to assess the conduct of the voting and counting process as well as to verify the official vote count. Unlike exit polls, PVT does not involve observers asking voters for whom they voted. PVT observers record the official figures as announced by the presiding officers at the sampled polling streams. The official vote counts from the representative random sample of polling streams are subjected to rigorous integrity checks and then analyzed to draw projections.

ELOG successfully conducted a PVT for the 2010 referendum on the Constitution. In the African elections, PVT has been applied successfully in countries such as Nigeria (2011& 2012), Ghana (2008& 2012), Uganda (2011) and Zambia (2008& 2012). In most of these exercises, the PVT helped to reduce mistrust in the tallying process by providing rapid independent verification of the voting process.

ELOG's 2013 PVT employed a nationally representative, random sample of 1000 polling streams drawn by experienced statisticians from the official list of polling streams provided by the IEBC. The sample contains polling streams in all 290 constituencies.

Election Day Process

Opening and Setup
With a few cases of late opening of polling streams, ELOG was generally satisfied with opening and setup process. We were equally satisfied with the security measures in place and the availability of strategic materials.

Voting
Our findings noted that the voting process generally went well albeit with some challenges, namely; malfunctioning of the electronic poll books and a high number of assisted voters.

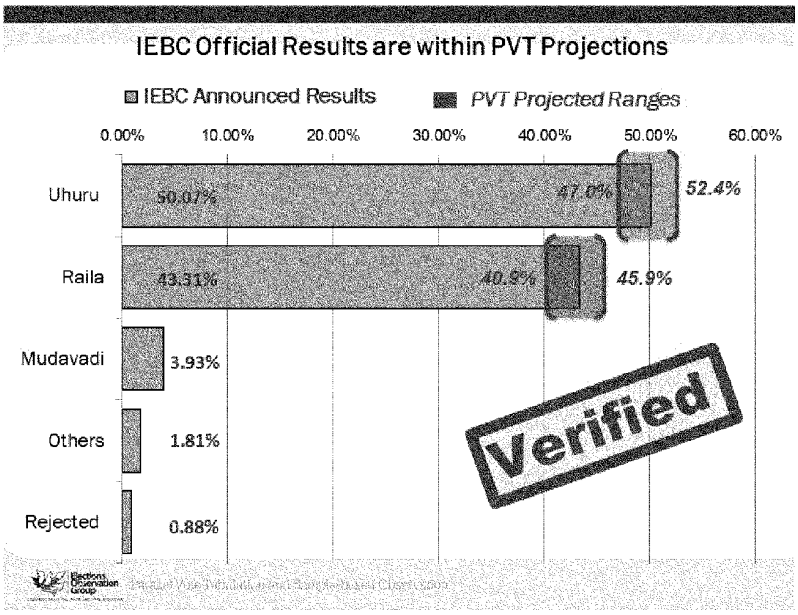
Closing and Counting
On the closing and counting process, our findings indicated as follows:

- An ODM/WIPER party agent (representing the CORD coalition) was present in 87.9% of all the polling streams. Where they were present, the ODM/WIPER agent signed the declaration of results for the presidential elections in 94.9% of these polling streams.
- A TNA/URP party agent (Representing the Jubilee Coalition) was present in 90.0% of all the polling streams. Where they were present, the TNA/URP agent signed the declaration of results for the presidential elections in 95.6% of these polling streams.
- A UDF party agent was present in 60.8% of all the polling streams. Where they were present, the UDF agent signed the declaration of results for the presidential elections in 87.6% of these polling streams.
- Agents from other parties were present in 88.5% of all the polling streams. Where they were present, they signed the declaration of results for the presidential elections in 88.3% of these polling streams.
- A copy of the presidential results form (Form 34) was affixed publicly outside of many polling streams (89.1%).

ELOG 2013 PVT Results and Final Turnout

IEBC's official results are consistent with ELOG's PVT projections. ELOG wishes to note and to remind all Kenyans that it is the IEBC which is constitutionally mandated to declare and announce the *final, official* results of the elections. Based on the PVT, ELOG has verified that the IEBC results fall within our projected range for all the eight presidential candidates.

Below are the ranges projected by the ELOG PVT for each of the candidates. These ranges are determined by the PVT estimates and the margins of error. Please note that the official result announced by the IEBC for each candidate falls within the range projected by the PVT. Thus, the PVT can confidently verify that the official result for each candidate is accurate.



Comparison of PVT Projections with Official IEBC Results

Candidate	PVT Projection	Margin of Error	Range: Lower Limit	Range: Upper Limit	Official IEBC Result
Kenyatta Uhuru	49.7%	2.7%	47.0%	52.4%	50.07%
Odinga Raila	43.4%	2.5%	40.9%	45.9%	43.31%
Mudavadi Musalia	4.2%	0.8%	3.4%	5.0%	3.93%
Peter Kenneth	0.6%	0.1%	0.5%	0.7%	0.59%
Dida Mohamed	0.5%	0.1%	0.4%	0.6%	0.43%
Karua Martha Wangari	0.4%	0.0%	0.3%	0.4%	0.36%
Kiyiapi James Legilisho	0.3%	0.0%	0.3%	0.4%	0.33%
Muite Paul Kibugi	0.1%	0.0%	0.1%	0.1%	0.10%
Rejected	0.9%	0.1%	0.8%	0.9%	0.88%

Turnout

The PVT projection for final turnout is 85.6% with a margin of error of +/- 1.7% is consistent with the IEBC's results of 85.9%.

In Conclusion:

ELOG is confident that the Election Day process has been generally credible. We call on the IEBC to immediately make public any information relevant and material to the results as announced. **More specifically, we call on the IEBC to make public the individual results (Form 34) from all polling streams.**

We urge any party or person who may feel aggrieved by the outcome of the elections to seek redress through the courts of law. We call upon the courts to act expeditiously on any complaints that may be filed, and apply fairness which is essential to ensure equal protection of the law and the guarantee of effective peaceful redress. ELOG will continue to observe the process as it unfolds.

We congratulate Kenyans for making history by turning out in large numbers to exercise their right to vote. We want to acknowledge the peaceful manner with which Kenyans have conducted themselves and urge that peace continues to prevail.

May we dwell in unity, peace and liberty.

God Bless Kenya

Thank You

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