

“Kenya’s 2013 Elections: An Effective Assistance Model?”
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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 nonpartisan 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 elections. 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 peaceful elections 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.