ASSESSMENT OF THE PRE-ELECTORAL ENVIRONMENT:
AN EVALUATION OF SUPPORT TO THE ELECTORAL COMMISSION, AND
RECOMMENDATIONS FOR SUPPORTING THE 2007 ELECTIONS

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I. EXECUTIVE SUMMARY

This report has been prepared in fulfillment of requirements specified in the Scope of Work for “An Assessment of the Pre-Electoral Environment, and Evaluation of Support to the Electoral Commission of Kenya, (ECK) and Recommendations for supporting the 2007 Elections.” Management Systems International (MSI) conducted a pre-election assessment in Kenya from March 9 to March 30, 2006.

The purpose of the assessment is as follows:

- To provide various stakeholders with accurate information on the pre-electoral environment;
- To inform the international community and local partners of the successes and shortcomings of the support already provided to the ECK;
- To promote informed dialogue among the international community and local partners regarding their electoral strategies;
- To map the way forward for timely engagement by development partners and diplomatic missions in the 2007 electoral process;
- To identify best practices for development partners and diplomatic missions to work together; and
- To help development and diplomatic partners to develop their own strategies for electoral support.

The report examines the institutional capacities of the (ECK) to manage elections, the political and legal environments that define the current internal electoral dynamics in Kenya, and the possible effect these factors may have on the 2007 elections.

The 2002 General Election and the November 2005 Referendum vote gave Kenyans, and the ECK, a sense of confidence that free, fair and relatively peaceful elections are possible. This sense of optimism was based on perceptions that most election-related technical processes were implemented in a relatively effective and efficient manner, and with relatively low levels of violence. Nonetheless, in 2002, political party nomination processes continued to be generally undemocratic suggesting the lack of internal party democracy; corruption continued to taint the election environment from the level of voters to party campaign financing; and, women remained on the peripheries of the political process. Conditions that generated the optimism in 2002 and 2005 may not apply in 2007: as of this writing, it remains unclear if, as in 2002, the opposition will unite into a singular and formidable force around which the Kenyan voters will rally, or if, as occurred in 1992 and 1997, the opposition will disintegrate, giving the ruling coalition the opportunity to maintain the reigns of power. If a unified opposition does not emerge, the 2007 elections may well be divisive and possibly violent. Furthermore, little has been done since 2002 to effectively address election-related challenges and violations that undermine the democratic gains made so far; such challenges include political party nominations, corruption, and violence.

In view of these dynamics, the report addresses a range of issues that will affect the forthcoming elections; it also offers recommendations for donor programmatic and diplomatic support that may contribute to free and fair elections in 2007. A priority list of critical issues and interventions derived from the above discussion are outlined in Section VIII. In conducting the assessment, the team met with a wide range of stakeholders including the donors, the Electoral Commission of Kenya, political party representatives, Members of Parliament, media representatives, political analysts, civil society organizations, and USAID partners and contractors.

Salient issues and recommendations raised in the report include:
• A closely fought election is likely to be violent, and mechanisms to deal with that violence (i.e., through the Electoral Commission of Kenya), are weak.

• Flashpoints of violence could include the South rift (Trans Mara, Narok, Mai Mahiu and Molo) and the Coast (Kwale, Tana River, and Mombasa), where the majority of multi-ethnic constituencies are located; Northeastern Kenya; upper Eastern province (Isiolo, Marsabit, Moyale), where competition over pasture and water, and historical inter-clan rivalry, could serve as pretext for election violence; and, the North rift (Turkana/Pokot/Marakwet communities, where cattle rustling and retaliatory raids could lead to election-related violence. In some areas such as Luo Nyanza, violence is likely to occur during nomination of candidates by political parties because the nominated candidate is usually assured of winning the election. This renders nomination a hotly contested affair.

• The Political Parties Bill is due for discussion by parliament before the end of this year. The bill addresses a number of critical election-related challenges including political party financing, and women’s participation. The bill also provides the ECK with a mechanism through which it could more readily enforce laws and codes of conduct related to nominations, campaign financing, campaign regulations and related violence. As such, this bill addresses crosscutting issues. Support for passage of the bill is suggested both as a means of strengthening ECK enforcement powers and, reforming political party processes and conduct.

• Police training to increase professional and technical capacity would contribute to strengthening the currently weak enforcement mechanisms in place during election periods. Such training could include workshops on the importance of maintaining law and order during elections; on what the parameters of law and order are during an election period; and, on tactical and strategic approaches to addressing elections-related violations.

• Regular stakeholder dialogues, convened by the ECK, and attended by political parties, police, and media, can contribute to a fundamental understanding about the critical need for law and order during the election period, and to agreement on, and enforcement of basic codes of conduct.

• Violence monitoring activities and election observer missions (both domestic and diplomatic) proved useful in the 2002 election. These observer activities included an effective a CIDA-funded referendum-monitoring project through KNCHR and ECK that tracked ethnic hate speech, incitement to violence, and misuse of public resources. Kenya’s politics are still in transition and the environment, in which the 2007 elections will be held, is as yet undetermined. As such, the presence of such monitoring efforts and observer missions, well before polling day, would serve to deter violations; inform the public and relevant actors (i.e., the ECK, and government) about potential problems; and, lend credibility to election day results.

• The media plays an important role in shaping the views of the public. During an election period this power is critical in exacerbating or calming tensions and potential violence. In addition, the media is significant in terms of the information it provides the public regarding issues and campaigns, and the effect its reporting has on the success of women candidates. For these reasons, media is a crosscutting sector in the context of elections. Training for journalists and editors, from print and electronic media, on ethics, journalistic practices, and the substantive issues on which they report, would contribute to an improved and more objective quality of reporting. Fora for editors and media owners, where agreement can be reached on an elections-related code of conduct, are also fundamental.

• The Electoral Commission of Kenya has been the recipient of donor assistance directly, and indirectly, through partners that must rely on the ECK for activity implementation. In some cases, projects and institutions cooperate with the ECK, but activities are implemented by external organizations. Because of inadequate administrative and professional capacity in the Commission, activities are generally undertaken one at a time, and those activities are prescribed by the institution’s work plan. Activities that are not part of the work plan and that require direct
ECK participation are thus likely to be delayed. Alternative means of support to the ECK may need to be considered.

- Issues identified as most critical to the 2007 election include: potential violence, including ethnic hate speech and incitement to violence; role of the media; voter registration; constituency boundary review; political party nomination process; enforcement of campaign regulations; abuse of office and resources; presence of election observers; and the status of the ECK Chair and commissioners.

Recommendations for donor support listed in Section VIII – Prioritized List of Issues and Recommendations and Section IX - Timetable for Potential Donor Actions, focus on funding, technical and/or diplomatic support the donors may consider. In most cases, financial and/or technical assistance for activities outlined could be directed through local and/or international organizations or the ECK.

II. METHODOLOGY

The MSI team was composed of Dr. Sara Steinmetz, Democracy and Governance Consultant; and, Professor Peter Wanyande, Lecturer, University of Nairobi; and, Jeremiah Owiti, Executive Director, Center for Independent Research. The assessment of the pre-electoral environment for 2007 commenced in Kenya on March 9, 2006. Relevant literature and documents were reviewed, and interviews were conducted with an array of stakeholders between March 9 and March 30. Interviews meeting held included government and government-related organizations, parliamentarians who also represented their parties, civil society and CSO representatives; USAID partners and contractors, representatives of the media industry, political analysts, and donors. A list of those interviewed appears in Appendix A. To gather detailed information on support extended by the donors for the 2002 General Elections and beyond, the team submitted a request for information and documents to UNDP, which was then circulated to the donors. UNDP, the Norwegian Embassy, the European Community, and CIDA responded.

The team met with the LiMiD-T Electoral Process Subgroup on March 9 and with representatives of some embassies and donor-aid agency staff on March 21. These meetings gave the donors an opportunity to discuss ideas, issues, and major areas of concern as they relate to the 2007 elections.

The report examines the institutional capacities of the Electoral Commission of Kenya (ECK) to manage elections, the political and legal environments that define the current internal dynamics in Kenya, their possible effect on the 2007 elections, and recommendations for donor consideration. In some cases reforms and legislation that require the attention of the Government of Kenya are listed. Donor support in some of these cases may be limited to diplomatic discussion.
III. BACKGROUND TO THE 2007 ELECTIONS

ELECTIONS IN KENYA

Kenya has a solid tradition of elections, and has held an unbroken spell of general elections every fifth year since independence. The independence elections of 1963 in which KANU and KADU were the main contestants, and all subsequent elections held during the single party era in 1969, 1974, 1979, 1983, and 1988, only involved contests for local government and parliamentary seats. The president was always unopposed because the one party system of government required that the president of the ruling party be the sole presidential candidate. In 1966, the “little general election,” was held for parliamentary seats only. This election was occasioned by the crossing of some KANU MP’s to the opposition Kenya People’s Union (KPU). Elections in the multi-party era (1992, 1997, 2002) all involved contests for local government and parliamentary seats, as well as for the presidency. These elections have been held on the same day.

The electoral system used in Kenya, since independence, is the First Past the Post (FPTP) system. This system is provided for by Section 5 (3) (f) of the Constitution, has been noted to unduly favor incumbents, particularly if the opposition is fragmented. It is also considered to be unfair, especially by small parties, women, and young candidates who often garner considerable aggregate votes in the total vote tally, but miss out altogether in contests for parliament and civic authority seats.

THE 2002 ELECTIONS AND THE END OF AN ERA

When the constitutional term of office of KANU’s long serving president Daniel Arap Moi came to an end in 2002, he sought to orchestrate the next election through the so-called “Uhuru Project.” This “project” involved the installation of Uhuru Kenyatta, the son of Kenya’s first president Jomo Kenyatta, as KANU’s flag bearer in the presidential elections scheduled for December 2002. In Moi’s calculation, Uhuru Kenyatta as the party’s flag bearer would guarantee KANU’s success in the 2002 elections. It would bring the minority communities which, supported by the populous and politically influential Kikuyu and Luo communities, brought KANU success against a numerically stronger but fragmented opposition in the general elections of 1992 and 1997. The confidence of President Moi in this endeavor had been buoyed by the fact that by the middle of the 8th parliament (1997-2002), he had recruited the National Development Party (NDP), led by the influential Luo politician, Raila Odinga. This guaranteed his ruling party KANU unfettered control of parliament and the constitutional review process.

The Uhuru Project, however, weakened KANU, as politicians who had hoped to contest the presidency on KANU’s ticket resisted Moi’s imposition of a candidate. Many of them defected from the party and joined the opposition. In July 2002 opposition parties, including the Democratic Party (DP), FORD Kenya, and the National Party of Kenya (NPK) formed an electoral alliance, the National Alliance Party of Kenya (NAPK). In August, KANU rebels formed the Rainbow Alliance in an attempt to force Moi to accept the will of the party in selecting a presidential candidate. Following Moi’s announcement in October 2002 that Kenyatta was to be KANU’s official presidential candidate, six government ministers, including Raila Odinga, and thirty KANU deputies broke from the party and joined the Liberal Democratic Party (LDP). Negotiations between the LDP and the NAK led to the formation of the
National Rainbow Coalition (NARC), an alliance of fourteen opposition parties. It is this formidable NARC that beat KANU in the December 2002 elections, and formed a new government under the presidency of Mwai Kibaki. Kenya’s politics, however, are still in transition and pose a challenge to both the governing coalition and the opposition.

THE CHALLENGE OF TRANSITIONAL POLITICS

Since the re-introduction of multi-party politics in Kenya in 1992, opposition parties and their allies in civil society viewed the struggle against the KANU regime as a struggle to usher in what was variously referred to as the new dawn, the new beginning, or a break with the past. These allusions to a new era bespoke the desire for an end to authoritarianism, for the beginning of competitive and pluralistic politics, and for the systematic redress of economic and social injustices. In a word, the defeat of KANU would usher in a freer society.

Based on promises made during the campaign, it was widely expected that NARC would expedite the enactment of a new progressive constitution, tackle public corruption robustly, govern through a strong coalition of reformists, and propel Kenya to fulfill its considerable potential to become an economically prosperous, socially cohesive, and politically progressive country devoid of negative ethnicity.

As things stand, however, many argue that traditional ethnic and oligarchic politics continue to play an important role in Kenya. One analyst has noted, for example, that the NARC government, like the previous Moi government, is still essentially a regime resisting fundamental transformative changes in society, and merely seeks to renew its legitimacy through competitive politics. This was the backdrop for the November 2005 referendum on the proposed new constitution (PNC).

THE NOVEMBER 2005 REFERENDUM

Infighting between coalition members began almost immediately following the appointment of the new Cabinet in January 2003, and constitutional reform became a focus for political rivalries within the NARC, as well. The constitutional referendum of November 2005, pitted members of the NARC coalition against each other in support of, or in opposition to the proposed new constitution (PNC). The NARC rebels, the official opposition KANU and elements within civil society led a vigorous and successful NO (dubbed orange) campaign to defeat the PNC. The margin of defeat (which reached over 1 million votes), and a “NO” vote in seven out of Kenya’s eight provinces (only central province voted “YES.”), set a panic wave inside NARC, culminating in the unprecedented dissolution of the entire cabinet by President Kibaki and the final expulsion of LDP ministers. Early in 2006, the new party, NARK-Kenya was formed and registered with the blessings of the President. This has complicated matters for the ruling coalition even more. Several NARC MPs, mostly from central province and the Mount Kenya region, have joined the new parry and have indicated they will run on this ticket in the 2007 elections. President Kibaki too seems set to join the new party. Under these circumstances it is difficult to talk about a government of national unity.

2 Ibid.
IV. ELECTION ENVIRONMENT

LEGAL ENVIRONMENT

THE CONSTITUTION

Section 59 of the Kenya Constitution provides that a general election be held every five years, and that every citizen aged 18 years and above, with a valid national identity card and a voters card, qualifies to vote. The Constitution of Kenya, Section 41, establishes the Electoral Commission of Kenya (ECK), and spells out its functions in sections 42 and 42 A. (See section on Election Administration)

STATUTORY PROVISIONS

Guidance for the ECK, as it relates to the Commission’s election administration responsibilities, is provided through the National Assembly and Presidential Elections Act, the Local Government Act, and the Election Offences Act. The ECK has additional powers and responsibilities conferred by the Societies Act, the Public Order Act, the Penal Code, the Kenya Broadcasting Act, and the Public Holidays Act. Other laws considered to have a bearing on elections are the Chiefs Act, the Registration of Persons Act, the Police Act, the Administration Police Act, the Preservation of Public Security Act, the Public Officers Ethics Act, and the Public Collections Act.

A number of election-related reforms have been passed: The Public Order Act was amended to dispense with the requirement for government licenses for public meetings; this change was instituted as part of the Inter-parties Parliamentary Group (IPPG) reforms implemented prior to the 1997 elections. In June 2002 the Miscellaneous Amendment Act amended the National Assembly and Presidential Elections Act to provide for the continuous registration of voters; this supplants the previous practice of periodic voter registration drives. The National Assembly and Presidential Elections Act was further amended to include a code of conduct for political parties.

SUPPORTING REGULATIONS

In September 2002, the National Assembly passed a resolution approving the Presidential and Parliamentary Elections (Amendment) Regulations 2002. Under Section 34 of the National Assembly and Presidential Elections Act (Cap 7), the ECK had recommended changes that were incorporated into the approved amendment. Major changes under the new regulations included:

- Assisted voters: blind, illiterate or physically disabled voters were given the right to freely choose a companion or an assistant (under an oath of secrecy) to assist them in marking a ballot paper.
- Marking of ballots: Voters were given the right to make any mark to indicate their choice of candidate on the ballot paper (except a mark that identifies the voter). (Previously they were required to put a mark X).
- Counting of ballots: Ballots are now counted at the polling stations, in the presence of the candidates or their agents, immediately after the closing of the voting exercise. (Previously the ballots from a district were transported to a central place for counting).

Regulation 2 of the National Assembly and Presidential Elections Act allows the Electoral Commission of Kenya to engage the Kenya Police, the Administration Police, and any other security officers that may
include game wardens, retired police officers, and the National Youth Service, to provide security at designated polling stations. This regulation is meant to ease the ECK’s security logistics.

THE PROPOSED POLITICAL PARTIES BILL

The Political Parties Bill provides for registration, regulation, and funding of political parties. It is widely viewed as a response to the problem of undemocratic parties, i.e., parties that are controlled by ethnic groups and/or wealthy patrons. With the proposed reforms, it is anticipated that party dependency on individuals and/or tribal cliques would be weakened and that party operations would be conducted more democratically. In addition to regulations related to political parties, the bill would also give the ECK powers of oversight over political parties, including supervision of their candidate nominations processes and general governance.

Particularly contentious elements of the Political Parties Bill are found in a political party-funding clause that stipulates that “fifteen percent” of the fund “shall be paid equally in accordance to the number of women candidates elected in each party.” In addition, the clause notes that “fifty percent of the moneys allocated” through the fund, “shall be distributed equally among political parties each of which obtained not less than two percent of the total votes cast at the previous parliamentary elections, another thirty-five percent shall be paid equitably and proportionately by reference to the number of votes secured by each of the political parties.”

This funding formula is problematic because parties that have sponsored MPs to parliament are now no longer cohesive units inside parliament. For example, many MPs sponsored to parliament by NARC have crossed over to the opposition, while most FORD People and some KANU MPs have crossed over to the government side. In the event registration of a political party is cancelled, “the Attorney-General shall make an application for the winding up and dissolution” of the party, “and the disposition of the property, assets, rights and liabilities” of the party.”

In addition, parties such as LDP, FORD Kenya, and NPK have MPs who are nominally NARC MPs by virtue of sponsorship to parliament. The party funding scheme, it is noted, is also problematic because it discriminates against new parties, and assumes that existing parties represent the new Kenya that citizens want.

REVIEW AND CONSOLIDATION OF ELECTION LAWS AND RELATED LEGISLATION

The Kenya Law Reform Commission (KLRC), the Electoral Commission of Kenya (ECK), the Attorney General’s Chambers (AGC), the Ministry of Justice and Constitutional Affairs (MOJCA), and the Institute for Education in Democracy (IED) have been engaged in an initiative to revise and consolidate election laws and regulations, currently scattered in the Constitution and numerous Acts. Two bills,
namely the Elections Bill and the ECK Bill were developed and discussed at workshops held in November 2004 and February 2005. While broad agreement exists on the Draft Elections Bill 2005, it has not been finalized: the ECK was unable to give the process necessary attention because it was involved in preparations for and conduct of the constitutional referendum. A stakeholder’s workshop, hosted by KLRC, is planned for 2006 to finalize the draft prior to presentation to the AGC. Discussion about the draft ECK Bill, held in November 2004, focused on whether it is necessary to have specific legislation to regulate the ECK. Two positions emerged: (1) The “ECK was adequately governed by the Constitution and there was, thus, no need for a specific statute (this was the position also taken by ECK during the workshop), and (2) the Constitution, as in many other cases, does not provide details for any institution it establishes;” it is, “therefore, necessary to have a statute to provide for details in respect of ECK.” Meeting participants thus resolved ‘That provisions [were] necessary but the decision whether or not to have them in a consolidated electoral law or a dedicated statute will be made as a result of further discussions.’

The draft ECK Bill has not proceeded as far as the Elections Bill 2005, particularly because some discomfort exists, within the ECK, with laws that may go beyond the current Constitutional provisions that address the Commission’s status, structure and function. Nonetheless, the Commission intends to hold internal discussions, after which it may decide to present the draft ECK Bill to a stakeholder workshop.

Next steps for the two draft documents include convincing the AGC to accept the bills, presenting them for cabinet discussions, tabling then in Parliament, and lobbying for their passage in the Parliament. Preparations by ECK to conduct six bi-elections occasioned by the death of six incumbent MPs from Northern Kenya in a plane crash in April 2006 are only likely to cause more delay in discussing and processing the ECK bill.

MINIMUM CONSTITUTIONAL REFORMS?

In the run up to the 1997 elections, the opposition parties that lost the 1992 elections to the then ruling party demanded comprehensive constitutional reforms as a condition for their participation in the 1997 elections. The opposition argued that they lost because the constitution favored the ruling party and that the constitution was meant for a one party system of government. A compromise was eventually reached between the government and the ruling party that minimal constitutional amendments would be effected before the 1997 elections. This was done.

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5 Electoral laws identified as relevant to the reform process include: The Constitution of Kenya; National Assembly and Presidential Elections Act (Chapter 7, Laws of Kenya); Local Government Act (Chapter 265); and, Elections Offences Act (Chapter 66). In addition, other laws that were considered to have a bearing on elections included: Kenya Broadcasting Act (Chapter 212); Public Order Act (Chapter 56); Societies Act (Chapter 108); Registration of Persons Act (Chapter 107); Police Act (Chapter 84); Administration of Police Act (Chapter 85); Public Collections Act (Chapter 106); Public Holidays Act (Chapter 110); Chiefs Act (Chapter 128); Preservation of Public Security Act (Chapter 57); Penal Code (Chapter 63); Service Commissions Act (Chapter 185), and Public Officers Ethics Act (Act No. 4 of 2003).
6 Draft evaluation report on IED project on “Strengthening Representation and Good Governance in Kenya.” February 2006, pgs 19-21
Opposition MPs, in particular, regard the current constitution as so fundamentally flawed as to be unable to facilitate free and fair elections. For instance, presidential powers and discretion over regulations relevant to elections are still considered too broad. The Office of the President, for example, can redraw administrative boundaries and create districts without parliamentary approval. Creation of new districts is in turn often intended to impress upon the ECK the need to split constituencies. A new constitutional dispensation to facilitate the conduct of free and fair elections is therefore considered imperative, but proponents of a new constitution also acknowledge that only minimum amendments to the parent law are politically possible before the 2007 elections. Notwithstanding the unpopularity of minimum reforms with the broader reform constituency, many opposition MPs believe this could be the only option available, even if it is not the optimum one.

THE POLITICAL ENVIRONMENT

A HIGHLY POLARIZED SOCIETY

Kenyan politics has generally revolved around negative ethnicity. Communities tend to support political parties formed or headed by one of their own. People vote for one of their own in the hope that this would bring more development to their areas. This is especially the case with presidential elections. The decision by Kenyans to downplay their ethnic differences and to overwhelmingly vote for Mwai Kibaki as their president in 2002 gave hope that ethnicity would no longer take center stage in Kenyan politics. This however was not to be.

The NARC fallout has increased negative ethnicity, and engendered a highly polarized society. This has become apparent in the conduct of business, especially in parliament and the executive. In parliament, MPs elected on the KANU ticket from central province, are openly allied with the GNU, perhaps because they perceive the presidency as being occupied by “one of their own.” Similarly, the MPs from the so-called Luo Nyanza have all followed Raila Odinga to the opposition benches and rejected cabinet seats offered by the GNU. Ministers are accused of appointing members of their own ethnic groups to plum parastatal jobs, and to senior management positions within their ministries. Indeed, a motion has been tabled in parliament seeking a government response to this development.

The issue of ethnicity has been the subject of debate in the Kenya parliament from time to time. It has been reported, for example, that MPs from two different tribes complained that the Ministry of Education was dominated by Kikuyus and that they disparaged the tribe. One parliamentary columnist has described the debate as the ventilation of tribal diatribe in coarse, unmitigated and unapologetic versions. Such comments might suggest that a sense of anti-Kikuyuism is taking root among the political class.

The government of national unity

The constituent parties of NARC (LDP, FORD Kenya, NPK and DP), are now clearly separated in all but name. DP, NPK and FORD Kenya remain the parties within NARC, with the majority of FORD People and renegade KANU legislators incorporated to constitute the Government of National Unity (GNU). Whereas the GNU is the de-facto governing coalition, however, its legitimacy has been questioned by no less a personality than the speaker of parliament, Francis Ole Kaparo. The Speaker has cast aspersions on the status of GNU as a party and a ruling coalition and has consistently denied the GNU authority to use the old chambers of parliament for its planning and strategy meetings on parliamentary business. Implicitly, however, NARC is still recognized as the ruling party.

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9Nixon Ng’ang’a, From the gallery, Sunday Nation, August 1, 2004, pg 23
State of the opposition

A state of confusion appears to dominate in parliament in regard to the “government” and “opposition” sides. Voting on the government side in parliament is the GNU, which includes the DP wing of NARC, FORD Kenya, NPK, individual MPs poached from KANU, and most of FORD People MPs. Individual MPs of non-government parties such as Sisi kwa Sisi and Safina, especially those from central and eastern provinces, also typically vote with the government side. Adding to the confusion about the line between the ruling party (or coalition) and the opposition is the fact that a large number of MPs (and ministers) voting with GNU now openly express affiliation with the newly registered NARC-Kenya party. Indeed, the Vice-president, the Honorable Mody Awori, has caused a political storm by claiming that President Kibaki will defend his presidency on a NARC-Kenya ticket. This has caused rifts in the GNU, with a section of FORD People and Ford Kenya suggesting that their pact with GNU ends by 2007 and they will consider their options at that point. A union between Ford Kenya and NPK towards the 2007 elections has even been mooted.

As things stand, mainstream KANU and the LDP wing of NARC constitute the rump opposition. The two parties also constitute the backbone of the loose union of political parties and civil society groups calling itself the Orange Democratic Movement (ODM), which marshaled the “NO” vote to defeat the PNC in the November 2005 referendum. A few renegade FORD People MPs, and the small Shirikisho Party, typically votes with the opposition in parliament. As is the case with the GNU, the speaker of parliament has also denied the ODM permission to use the old chambers of parliament. According to the speaker, the ODM is neither a party nor the official opposition. Accordingly, whereas the majority of LDP MPs now sit on the opposition benches, KANU remains the recognized official opposition. The matter was further complicated by the fragmentation of KANU following recent party elections that resulted in the party splitting into two factions -- one led by Uhuru Kenyatta, and the other by Nicholas Biwot. The consequence of this is that the party does not vote as a bloc in parliament. The unity of the opposition will be put to the test when by-elections are held for the seats that fell vacant after the death of five MPs from Northern Kenya in a plane crash in mid April 2007.

The battle for the control of parliament

As the country approaches the 2007 elections, some of the defining political battles will inevitably be fought inside parliament. The GNU’s conduct has raised questions about its interest in ensuring the proper functioning of parliament. For example, in contrast to parliamentary practice in the Commonwealth, which has been the standard in Kenya since the first independence parliament, the GNU appears keen to fully control the House Business Committee, which sets the agenda of parliament. It is possible that this could mean that tabling of motions of censure against errant ministers, and no confidence motions against the government, will not occur in the current parliament.

Constituency boundary review/delimitation could be manipulated

Although the review of constituency boundaries is the responsibility of the ECK, only the National Assembly has the powers to increase the number of constituencies; it is yet, however, to pass legislation specifying the criteria for establishing constituencies and/or directing the ECK to increase or decrease their number. The last delimitation occurred in 1996, prior to the 1997 elections, when the number of constituencies was increased from 188 to 210. That exercise resulted in a highly unequal pattern of representation favoring the then ruling party KANU. Some criteria for delimitation of constituency boundaries have in the past included population equality, communities of interest, culture (i.e., language and ethnicity), and respect for other boundaries (e.g., administrative and political). KANU gave primacy to geographic size of constituencies as a basis for the review and delimitation of constituency boundaries. The addition of new districts, mostly in GNU-friendly areas (an exercise that does not require

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parliamentary approval), has raised suspicion that the Kibaki regime seeks to pressure the ECK to prioritize administrative boundaries as criteria in the constituency boundary review to favor itself.

The Electoral Commission of Kenya (ECK) is currently reviewing constituency boundaries. The political sensitivity of this issue has prompted the ECK Chair, Samuel Kivuitu, to expressly challenge parliamentarians to make a commitment that they would not block recommendations for more constituencies,11 suggested by his team.

Snap or early elections?
There is a remote possibility for snap or early elections, for which opposition parties may press. MPs are asking that parliament be dissolved and that new elections be held because the ruling party, in effect, does not exist following inclusion in government of some members of the opposition party. In any event LDP has pulled out of NARC, and Ford Kenya and NPK are threatening to pull out if the new party, NARK-Kenya, fields its own candidates in the impending six by-elections in Northern Kenya. The leaders of NPK and Ford Kenya have not joined NARC-Kenya

In addition, the opposition is fighting for an amendment to Section 48 of the Constitution, which would allow parliament to control its own calendar and thus determine when it opens and closes and when elections could be called. This is being pursued through the so-called Keter Bill.

ELECTION VIOLENCE
One of the major factors that may frustrate the realization of free and fair elections in 2007, is violence. Election-related violence will depend on a number of factors. If, as in 2002, the opposition is able to unite before the elections, it is most likely that voters would overwhelmingly support the opposition and that electoral competition would be less intense. As such, less violence, or very low levels of violence would be expected. If, on the other hand, the opposition fails to unite, more intense political and electoral competition is likely to occur, and violence is likely to escalate. In addition, violence may be prompted by perceptions that the government plans to cling to power and hence rig the elections. This is based on the experiences of 1992 and 1997. In both elections, the government was perceived to have sponsored or at least instigated ethnic clashes that occurred in the Coast and Rift Valley provinces in the run up to the elections. It was clear that the government was intent on clinging to power at all costs. There were also a number of private militias used by politicians from the government and the opposition sides to harass members of the public and supporters of rival political parties. In both elections, the opposition was fragmented and encouraged violence.

The practice of political zoning, i.e., the perception promoted by certain parties that they have a monopoly of influence in certain regions, has also been cited as a source of political violence. The case of KANU in Rift valley, and in North Eastern Kenya in the 1992 and 1997 elections; of Ford Kenya in Nyanza in the 1992 elections, and in Western Province in the 1997 elections; and, of the Democratic Party (DP) in Central province in the 1997 elections, all point to the high potential for violence in the event that other parties attempt to “penetrate” strongholds of the dominant parties in the claimed regions. In the run-up to the 2007 elections, zoning could be an issue again: examples include the Liberal Democratic Party in Luo-Nyanza; Ford Kenya in Western Kenya (particularly Bungoma district); KANU in North Eastern Kenya; and, NARC-Kenya in parts of Central province (particularly Nyeri and Kirinyaga districts) and Eastern province (populated by the Meru and Embu).

11 Sunday Standard, March 26, pg 4.
Flashpoints of violence could include the South rift (Trans Mara, Narok, Mai Mahiu and Molo) and the Coast (Kwale, Tana River, and Mombasa), where the majority of multi-ethnic constituencies are located; Northeastern Kenya; upper Eastern province (Isiolo, Marsabit, Moyale), where competition over pasture and water, and historical inter-clan rivalry, could serve as pretext for election violence; and, the North rift (Turkana/Pokot/Marakwet communities, where cattle rustling and retaliatory raids could lead to election-related violence. In some areas such as Luo Nyanza, violence is likely to occur during nomination of candidates by political parties because the nominated candidate is usually assured of winning the election. This renders nomination a hotly contested affair.

Because the stakes are very high, it has been suggested that political actors could be tempted to make use of informal repression, particularly through the illegitimate use of police and or private/criminal gangs from urban slums and rural vigilante groups. This would be tantamount to a challenge on the monopoly of legitimate use of force, conferred solely upon the state, and accordingly to the breakdown of law and order.

**ECK capacity to deal with violence**

All actors acknowledge that the ECK has weak capacity to deal with violence, both in legal and institutional terms. Indeed, the ECK has no power to sanction violators, unilaterally. To lodge a legal complaint against a violator, for example, the ECK must go through the High Court, using a process that is fraught with limitations: i.e., papers against the charged must be served and, High Court offices are not located everywhere. In addition, the process permits a person/party to continue activities while a case is being appealed. Because this is a lengthy process, sanctions may be imposed on violators after elections; as such, there are no repercussions on the conduct or result of the elections. Furthermore, violations that occur on election day cannot be pursued in the High Court because complaints must be submitted before election day.

The efficacy of the police force in protecting and supporting free and fair elections, countrywide, has been questioned as well. In Kisumu, during the November 2005 referendum, for example, police who were under no direct threat, fired live bullets into crowds of demonstrators. Recent attacks on the premises of the East African Standard and the Kenya Television Network, have also cast doubt on the responsible conduct of security forces during the elections.

**Mechanisms to monitor violence**

The rhetoric and practice of violence intimidates voters and affects the degree to which elections may be considered free and fair. This effect is even greater on women voters and female politicians.

The Central Depository Unit (CDU) was a USAID-funded civil society initiative, established during the run-up to the 2002 elections; its central functions were to monitor, collect and disseminate information on violence, and to conduct advocacy. CDU partners included NCCK, CGD, Tawasal Foundation, Kenya Human Rights Commission, and the Foundation for Dialogue, and Kenya League of Women Voters. Together, the consortium reached 77 of 210 constituencies.

To ensure that information was widely reported, the CDU targeted the media, political parties, the police and, informally, the ECK. Mechanisms it utilized to publicize election-related violence included a database of violent incidents, a public website, press statements, and radio and television appearances. Activities undertaken by the Unit proved successful and could serve as a model for future activities. In the view of the players in the CDU, as well as in the opinion of the ECK itself, CDU observers increased public confidence and acted as deterrence. In addition, according to the ECK, the CDU’s information dissemination activities helped the Commission focus on violence-related problems.
During the November 2005 referendum, the Kenya National Commission on Human Rights (KNCHR), with support from CIDA, monitored ethnic hate speech as well as cases of incitement to violence. Together with the Kenya Human Rights Commission, KNCHR released “Lists of Shame” to the press. These lists contained the names of political leaders and public officials who had used inflammatory speech and proved successful in reducing such language. Through their newspapers and television outlets, the two main media houses, the Standard Group and the Nation Media Group, published accounts of incitement to violence and ethnic hate speech as captured by the KNCHR monitors. According to KNCHR, the level of incitement, particularly from the “NO” side, dramatically dropped or even stopped after publication of the incitement reports. Indeed, KNCHR went a step further and initiated prosecution processes against the Honorable George Khaniri of the “NO” side, and Mr. Titus Mbathi, who chaired the campaign committee on the “YES” side.

**The lessons learned from monitoring the referendum**

According to KNCHR, a number of vital lessons emerged as a result of the Commission’s hate speech and violence monitoring activities during the referendum campaigns. Lessons learned include:

- The media is exceedingly powerful in shaping public opinion and holding leaders to account, but it is too commercially oriented.
- It is the leaders, and not the people, that are the greatest culprits in respect to incitement to violence.
- The ECK needs stronger teeth to mete out negative sanctions on violators of the election code, in the same manner as Public Accounts Committee and the Public Investment Committee can blacklist companies or bar individuals from holding public office.

**Recommendations**

- Monitor and expose ethnic incitement and hate speech
- Re-establish the CDU for the 2007 elections.
  
  In order to reach a larger percentage of constituencies, it may be useful for the CDU to incorporate Community Based Organizations (CBOs). This would expand the CDU’s reach and, at the same time, develop local capacity to monitor violence. Because such a project would require a more extensive administrative and training mechanism, it would be advisable to begin this project early.
- Consider engaging KNCHR to host CDU and provide the requisite audio-visual equipment to facilitate monitoring activities for hate speech and incitement to violence. KNCHR is willing to host CDU; it has plans to expand monitoring of hate speech and incitement to violence in the 2007 elections, and has initiated the process of concept development and project design. KNCHR has also already established working relationships with ECK and has good knowledge of the workings and frailties of ECK peace committees.
- CDU activities for 2007 could include:
  
  1. A database of violent incidents continuously accessible to the ECK.
  2. Development of radio and/or television programs focused on election-related violence.
  3. Expanded ad/poster campaigns (e.g., placing ads in buses)
  4. Utilization of cell phone text messaging for anti-violence campaigns/education

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13 Interview with Maina Kiai, chairman Kenya National Commission on Human Rights.
In addition to CDU support, useful interventions to address election-related violence include:

- Strengthen ECK Peace Committees so that they are able to monitor, deal with, and report cases of violence or potential violence, immediately.
- Peace Committees reports would be considered official and thus oblige the ECK to respond.
- With Peace Committees on the ground and functioning, there would be less need for external observers of election-related violence.
- Constituency Peace Committees, which are currently composed of the Police chief, ECK planning officer, religious leaders, political party representatives, women and youth leaders, should be expanded to include business people, local correspondents and teachers.
- Encourage regular stakeholder meetings between the ECK, political parties, police, and media.
- Meetings would sensitize the parties about the need to maintain a peaceful, fair and free election environment.
- Support efforts to enhance ECK enforcement powers and mechanisms.
- The Political Parties Bill, if enacted, would give the ECK greater oversight and enforcement powers to regulate party conduct, including election-related violence. If passage of the Political Parties Bill is held up by disagreements, donors might consider supporting inter-party fora to foster dialogue and find compromises that would make it possible to pass the bill.
- Support media training and fora for editors/media owners to ensure that media coverage is objective and that it does not incite violence. (See section on the Role of the Media.)
- Resuscitate diplomatic efforts to limit election-related violence by indicating that the diplomatic/donor community is watching events.
- Conduct voter/civic education that informs the public on “ways violence can be stopped,” and the causes of violence (i.e., ethnicity/religious tensions/marginalization and competition for resources in programming).
- It is important for citizens to understand the roots of conflict within Kenya in order to come to terms with it and begin addressing the issues. With such an understanding, it may be more difficult for political actors to manipulate citizens and incite violence during elections.

ELECTORAL CORRUPTION

Corruption dominates Kenya’s politics and elections processes. A regulatory framework for governing political party funding and campaign expenditures does not exist, and the general public, as well as party officials acknowledge, that close links exist between the business sector and political parties. A 2005 NDI report indicates that approximately 50 percent of some campaign budgets are allocated to harambees and donations for schools fees and medical bills.

Observation reports and media accounts of the 1992, 1997 and 2002 General Elections, and all the subsequent by-elections in the multi-party era in Kenya, suggest that corruption, and in particular, voter bribery, is not only rampant, but also insidious and nuanced. Voter bribery takes various forms, including buying or selling of voters’ cards, buying or selling of votes, and provision of free transportation to polling stations. In many cases, commodities used for voter bribery include money, food, clothing, and drinks.

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Evidence examined suggests that by-elections, especially in the immediate period after re-introduction of multi-party system (1993), witnessed the highest prevalence, and perhaps the most criminal aspects of electoral corruption and bribery. This was the case particularly in by-elections conducted in Coast, Western, and Eastern provinces, and to a somewhat lesser extent, Nyanza province. Certain categories of voters are most targeted for bribery. These include; women and women’s groups; youth and youth groups; artisans/ touts/hawkers; teachers; and illiterate voters. Anecdotal evidence suggests that these categories of voters are attractive to candidates and political parties because of their numerical strength, potential for influencing others, and/or because of their malleability.

An evaluation of the UNDP-funded “Voter Education Project” indicates that electoral bribery had increased in 2002, from 1997. However, among many of those who had benefited from the projects voter education activities, the bribes did not lead to votes for the “bribe givers.”

**Misuse of public resources to fund elections**

In addition to voter bribery, party and government corruption affects election campaigns and the election environment. During the referendum campaigns of 2005, for example, pro-government ministers were accused of abusing public resources, including offices, money and cars for the pro-PNC campaigns. The Anglo-leasing scandal, according to statements made by one of the participants, was meant to fund NARC elections and maintain the power of president Kibaki and his allies. Government procurement processes are also prone to abuse, and the funds derived from such abuse can be used to fund election campaigns. Indeed, procurement of private international debt, in particular, has been discussed as one of the most open avenues for abuse, and one that is unchecked by parliament.

Enforcement of the Public Officers Ethics Act may also deter politicians from engaging in corrupt electioneering. During the 2005 referendum election, the KNCHR successfully monitored the misuse of public resources and cited MPs and leaders from both the No and Yes camps for violations of the Public Officer Ethics Act. Based on this success, the KNCHR plans to monitor abuse of public office and resources in the 2007 elections.

**Lack of campaign finance legislation is a major loophole**

Campaign finance legislation is non-existent. Previous legislation limiting campaign expenditure by prospective MPs to Kshs 40,000 was generally considered outdated and scrapped by KANU. The present draft of the Political Parties Bill requires that a political party that has participated in an election submit a detailed statement, to the Electoral Commission, of all expenditures “incurred in respect of each candidate supported by that political party specifying the manner in which any money involved was spent.”

**Recommendations**

- Support monitoring activities focused on abuse of public office and resources
- Support monitoring of campaign financing and voter bribery during election periods.
- Support advocacy efforts focused on developing campaign finance legislation.
- Support advocacy for the periodic publication and tabling in parliament of the national register of private international creditors to disclose possible corruption that may, in part, affect elections activities.

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18 The Political Parties Bill 2005 (Draft 5), Section 24(1).
• Discuss with the national anti-corruption campaign steering committee, approaches and mechanisms through which to tackle election-related corruption.

V. ELECTION ADMINISTRATION

Efficient administration of elections is key to the success of any election. Administration of elections involve several activities, namely registration of voters, inspection of the voters’ register, regulation of election campaigns, actual management of polling activities such as supply of election materials, opening and closing of polling stations, ensuring that polling stations are easily accessible and within reach of voters, accuracy, transparency and speedy counting of votes. For this to happen an independent electoral body, with supporting administrative and professional capacity, is required. Prior to the 1992 elections, the management of elections was under the control of civil servants, who themselves were under the control of the executive. It was therefore not independent. To address this problem the government established the Electoral Commission of Kenya (ECK) as an independent electoral body.

THE ELECTORAL COMMISSION OF KENYA

The ECK is responsible for the conduct and management of elections in Kenya. This constitutional mandate includes voter education; registration of voters; maintenance of voters register; regulation of campaigns; actual conduct of election on the polling day; management of results, including the announcement of election results; handling of election disputes; and, demarcation of election or constituency boundaries.

In 1992, responsibility for election administration was transferred from the Supervisor of Elections, a civil servant under the control of the executive, to an independent electoral body, the ECK. The Commission has since conducted and managed three general elections for the presidency, parliament, and local government. It also managed several by-elections and the Constitutional Referendum conducted on 25th November 2005.

Organizationally, the ECK has 22 Commissioners and skeletal professional and administrative staff at the head office in Nairobi. Total authorized staff for the Commission, both at headquarters and local levels is 579. At present 517 positions are filled. Distribution of staff at headquarters ranges from one legal officer in the legal department, to 12 technical staff in the IT section. Few departments have the numbers of professional personnel they require; indeed, approximately 40 additional senior or mid-level management staff is needed at headquarters. The elections administration department, for example, has four professional staff; the Chair has noted that they clearly need more. Four more technical staff and two managers are needed for the IT department. Staffing levels and requirements may increase even more if the ECK is given more responsibilities as a result of passage of the Political Parties Bill. In addition to headquarter staff, the ECK also has field offices and officers at the constituency and district levels. The Commission appoints returning officers, presiding officers, clerks and other support staff to assist in the actual conduct of elections in every polling station.

The current hiring process requires that the ECK request Ministry of Finance funding approval for new permanent staff. At present, however, much needed new staff are not being recruited or hired because it is hoped that a Human Resource Plan will go into effect in July 2006. The Plan revamps the structure of the Commission Secretariat and redefines various positions and job descriptions. Rather than fill slots
with the wrong people, the Human Resource Department has suspended most hiring until the Human Resource Plan comes into effect.

Partly because the Commission has not recruited adequate staff, and partly because commissioners had been involved in day-to-day management between 1992 and 1998, when the Secretariat was established, commissioners have yet to adequately delegate institutional functions to the professional staff. The current practice discourages staff as they feel they have responsibility without authority, and that they are not treated as professionals. Exacerbating these difficulties are institutional challenges that further affect efficiency of the Commission. These include unclear reporting relationships; a lack of adequate communication and coordination; and, inadequate institutionalization (e.g., unclear operational systems, inadequate documentation procedures and regulations).

A Strategic Plan and subsequent Human Resource Plan that address many of the issues related to the challenges faced by the Commission, has been developed with the assistance of the International Foundation for Election Systems (IFES). Full acceptance of the plans and the recommended reforms has not been achieved, i.e., some commissioners have resisted suggestions that the organization’s structure a number of related functions be altered. The Human Resource Department has revised the Human Resource Plan, taking into account the issues that caused discontent among some commissioners. By reviewing and revising the plan, it is now possible for the ECK to assume its ownership. Should there be no objections in the ECK Human Resource Committee and in the Plenary, the revised Human Resource Plan could go into effect in July 2006. At present, it is not clear if the Plan will pass through Committee or the Plenary.

Inadequate administrative and professional staff and the management style within the ECK makes it hard for the Commission to implement several projects simultaneously. Indeed, the Commission generally seems to implement one project at a time. During nomination of candidates for by-elections or elections, for example, all staff are involved in the activity while other work of the Commission comes to a standstill. The ECK has noted that it had stopped work on a CIDA-supported civic education project because it was involved in the November 2005 referendum and constituency demarcation activities.

In addition to structural, management and personnel issues that affect the effectiveness of the Commission, the ECK has indicated that it lacks transport for field staff that is responsible for the registration of voters, maintenance of voter register at that level, as well as voter education. The lack of transport has led to a situation in which these officers are idle for at least part of their work time, as they cannot travel to where the potential voters are located. The Commission also relies on the government and the military for vehicles to transport election materials to polling stations on polling day. This makes the ECK vulnerable to the government and even the military, and undermines the independence of the ECK.

_ECK Commissioners:_ Multi-party elections in Kenya are generally held the last week of December. Questions have arisen about the security of tenure for the ECK commissioners, particularly the Chairman, whose tenure comes to an end by December 2007, immediately before the elections. Non-renewal of the Chair could result in a weaker and politically compromised ECK. In addition, commissioners are often directly involved with election administration issues and implementation; as such they carry with them experience and institutional memory. Renewal of terms of office (for the Chair and other commissioners) is possible. As such, donors may wish to consider expressing support for renewal of the Chair’s tenure to avoid gaps and confusion that may occur if he is removed so close to elections.

**Preparedness for Snap or Early Elections**

Recent political events in the country relating to corruption scandals involving senior government ministers has cast doubts about the ability of this government to survive until the 2007 elections. There are even suggestions that parliament might pass a vote of no confidence in the government leading to snap or early elections. According to the law, a period of 90 days would be required, after parliament is
dissolved following a vote of no confidence in the government, for the ECK to organize elections. The ECK is confident that this is adequate time for it to organize elections, citing its success in conducting the November 25th 2005 referendum. A number of factors support the ECK’s confidence that it could conduct elections, even within a short time horizon of 90 days: the Commission continuously updates the voters’ register; as such, the register is ready for use any time elections are called. ECK personnel have worked on elections administration in the past and have accumulated experience; this includes temporary personnel engaged at the local levels. Assuming headquarters and local personnel remain with the Commission, and that the pool of temporary personnel has not been heavily depleted since the last election, the ECK could rely on a relatively experienced group of people to administer a snap election.

**Donor Coordination**

The ECK expressed the need for improvement in donor coordination both within the organization, and among the donors. A discussion of donor assistance to the ECK, as well as a donor coordination mechanism is found in Section VI – Donor Assistance to the Commission.

**Recommendations**

- Implement the Human Resource Plan currently under discussion within the ECK.
- The plan redefines various positions and job descriptions to be filled by professional staff with the goal of creating a more effective and efficient institution. It is expected to come into effect in July 2006. (Recommendation for ECK; possibility for direct donor impact limited.)
- Expand the ECK’s human resource capacity in line with the human resource plan. Ensure that transparent and open hiring process and gender considerations are utilized in the hiring process at all levels, from the most senior to the junior. (Recommendation for ECK; possibility for direct donor impact limited.)
- Revise Cap 7 of the Laws of Kenya to clearly define the role of commissioners (i.e., define their policymaking role), and recognize the Commission Secretariat as professional staff responsible for implementation. Consider utilizing appointment process for chair and commissioners based on KNCHR model; such change in appointment process may require legal revision. (Recommendation for Government; possibility for direct donor impact limited.)
- Establish office of donor coordination assigned to the ECK and paid for by the donors. The office would coordinate donor projects in consultation with donors, on behalf of the ECK.
- Provide TOT for elections personnel at the local level to increase awareness of election-related issues and regulations, and to develop a pool of trainers within the institution. (i.e., TOT for presiding supervisors, polling clerks, etc.) This can be achieved through the Basic Election Administration Training (BEAT) project implemented by IFES.
- Provide constituency offices with computers and networking to improve registration and the processing of election results. Currently only the district offices are served by computers yet the bulk of the work of ECK is at the constituency level.
- Support Human Resource Plan-related training, including in such areas as Gender and Diversity, and results based performance management. Such training would help to institutionalize the reforms implemented through the Strategic Plan.
- If Political Parties Bill is passed, conduct relevant training for new personnel.
- Support ECK efforts to identify what activities or work it could outsource, e.g., voter education; district planning (facilitate district planning workshops).
- Provide senior professional staff with training on comparative electoral law and administration and support visits by senior professional staff, to other electoral commissions, to learn how these commissions function. Useful lessons from these visits can be adapted for the Kenyan context.
- Provide training to existing staff that may require it in areas of specialization in which they are employed. Any additional staff should be recruited on the basis of specified criteria.
• Improve the effectiveness of field officers in carrying out their duties including registering voters, facilitating the inspection of the votes register, and conducting voter education, by providing districts with vehicle.

• Enable the ECK to transport election materials to polling stations independent of government and the military, as is currently the case, by providing vehicles.

• Strengthen Peace Committees (see Section IV – Election Violence).

• Support ECK-stakeholder dialogue on issues related to election violence and campaign regulations. (This is a crosscutting recommendation that is noted in Section IV – Election Violence, and Section V – Regulating Campaigns.)

• Create more efficient, effective, and timely processes through which the ECK is able to mobilize police and judicial mechanisms to address election-related violations. For example, move complaint jurisdiction from the High Court to a lower court; strengthen ECK capacity to conduct investigations and to fine violators. (This is a crosscutting recommendation that relates to violence and campaign regulation; it is noted in the section on Campaign Regulation, below.)

REGISTRATION OF VOTERS

Voter registration is a critical issue because in Kenya a citizen can only vote if he or she has registered as voter. Current rules require that to register as a voter, one must produce a national identity card (ID) or a valid passport. Most Kenyans do not hold passports. The ID is therefore the most widely used form of identification for registration as a voter.

The ECK has tried to ease registration for potential voters. As opposed to the previous practice that required that a voter register at the polling station where he or she would vote, one can now register in one location and have the registration details transferred to the polling station in the constituency where he or she will actually vote. Thus one can register in Nairobi and have the registration details reflected in one’s rural constituency. As of June 2004, the ECK had registered 1,557,930 transfers of voters’ names from one registration center or constituency to another.19 This exercise, however, is fraught with inefficiency, as voters often have to travel to their original polling stations to apply for the transfers. Further, the transfers are a major cause of double-registration, which in previous elections disqualified citizens from voting.

Registration problems affect women, particularly those in the rural areas, most significantly. Many do not have a birth certificate, and those who are married within traditional systems, do not have marriage certificates. In many cases, particularly in rural areas, a related man (father, husband, brother) must accompany the woman to endorse her request for an ID card. As such, women’s rights as citizens, and as potential voters, are circumscribed.

AWARENESS OF REGISTRATION DRIVES

Voter registration is a continuous exercise, although an outreach campaign takes place in the month of May. Experience over the years is that many potential voters, particularly the youth, fail to register because they do not possess the necessary national identity card. Problems with receiving ID cards are partly due to the fact that registration and the issuance of ID cards are the responsibilities of two different government departments. A segment of Kenyans also do not register as voters because they do not appreciate the impact they can have on the electoral exercise and are thus apathetic. Thus for instance

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19 Draft evaluation report of IED project on “Strengthening Representation and Good Governance in Kenya” (February 2006), Pg 17.
voter registration turnout for the period September 2003 and April 2004 was comparatively low at 6,012, compared to 600,000 for IDs.²⁰

POSSIBILITY OF MANIPULATION OF VOTER REGISTRATION EXERCISE

Concerns have been expressed that the voter registration exercise could be manipulated to favor politically correct regions as the 2007 elections approach. Such manipulation is possible through interference with the issuance of IDs that are needed by newly qualified voters (young adults reaching age of majority) in order to register. It is vital that the registration process is accurate, efficient and reliable. In its final report, K-DOP noted that “a faulty voter registration exercise could easily alter the voting pattern, denying people a free and fair election. A little misunderstanding on its accuracy could result to tensions and fears as experienced in November and December 2002.”²¹

RECOMMENDATIONS

• Conduct voter education to inform citizens about the continuous registration, inspection of registers, and attendant procedures.
• Support media campaigns to encourage youth to register.
• Conduct school outreach/civic-voter education programs.
• Support voter registration events to encourage registration of youth.
• Government, in conjunction with the Electoral Commission, should consider issuing ID cards and voters cards at the same time.

INSPECTION OF VOTERS’ REGISTER

Inspection of the voters’ register is a crucial stage in the electoral process. Its main objective is to ensure that all details related to the registered voters appear correctly on the register. This is important because inadequate, incorrect or inaccurate information about a voter may disqualify him or her from voting.

The ECK is concerned that the majority of voters do not inspect the register. Many do not understand the significance of this exercise. Others assume that the register is accurate. Still others claim they do not have the time to inspect the register.

The Commission is also concerned that the register is not very accurate. Common problems include misspelled or omitted names. In some cases registration officials start with the first names of the voter instead of the surnames, as required. This makes it hard to identify the voter in the register because the officials will search the name under the voter’s surname. Voters affected by this carelessness on the part of registration officials are not allowed to vote, as they cannot identify their names.

The problem of double registration is also common. This sometimes occurs when the names are being transferred from one document to another, or from one registration center to another. Problems associated with inaccuracy of the voters register necessitated the use of at least three different registers in the 2002 general elections. The ECK was able to use only one register in the November 2005 referendum, eliminating many of the problems associated with voters’ register.

To improve the accuracy of the voters register, ECK launched District Registration Committees in August 2004 to facilitate cleaning, updating and maintenance of the voters registers. This has involved working

²⁰ Ibid, pg 16.
with the National Registration Bureau. Nonetheless, the process for correcting a mistake in the register is still long and cumbersome. Some registration problems require that a citizen go to court and supply evidence. This discourages many voters from seeking redress.

RECOMMENDATIONS

- Train registration officials on the significance of the voters’ register and the importance of accuracy of records.
- Sensitize voters on the significance of inspecting the voters’ register. This can be done through voter and civic education.
- Provide adequate time for inspection of voter’s register. In the past the ECK has had to extend the period due to pressure from political parties. This experience should be used to determine the ideal period for purposes of implementing this recommendation.
- Adequately publicize the voter inspection exercise.
- Introduce innovative methods of making the exercise more accessible to the voter.
- Utilize electronic voter inspection system.
- Utilize political parties to bring voters’ register to local areas.
- Make the voters’ register available to voters at places close to them such as market centers and schools. One way to do this is to provide district level election officials with vehicles to enable them travel to various locations.
- ECK should develop standard guidelines on cleaning, updating, validation and maintenance of the voters’ registers
- Facilitate and strengthen the operations of the District Registration Committees and mechanisms that support close collaboration among the ECK, the National Registration Bureau, and the Registrar of Births and Deaths. (Recommendation for ECK and government offices; possibility for direct donor impact limited.)

REGULATING CAMPAIGNS

Campaign periods start after political parties have nominated their candidates. Current regulations give candidates at least three weeks to campaign. The practice, however, is that campaigns start much earlier and the ECK or the police appear unable to stop or regulate this practice.

The overall objective of regulating election campaigns is to promote free and fair elections. More specifically campaign regulations are aimed at ensuring that political parties and candidates do not use public resources; that violence is minimized, particularly through adherence to election codes of conduct; that politicians do not incite voters or use their supporters to intimidate opponents and their supporters; and, that candidates do not use abusive language against each other (a tactic that tends to intimidate female candidates, in particular).

In an effort to regulate campaigns, the ECK meets with major stakeholders, namely the political parties and the police, to sensitize them on the need to conduct campaigns in a peaceful and orderly manner. It is at such meetings that the political parties are asked to sign a declaration pledging they would avoid behavior that may interfere with the conduct of free and fair elections. Neither the government nor the ECK, however, have the capacity to monitor the expenditures of political parties and politicians. This is why buying of votes and bribery continues unabated.

The major weakness with regard to regulation of campaigns is the ECK’s lack of capacity, power and authority to enforce the rules. Without sanctions that can be imposed on parties, there is no incentive to obey the code of conduct. This problem is underscored by the fact that even after political parties have
signed a code of conduct, they violate its terms with impunity. Enforcement of electoral law regarding violations of the code conduct is usually implemented *post-facto* and, therefore, has no deterrent effect.

The police have the duty to maintain law and order in the country, including acting on election-related matters. The ECK has no power to ensure that the police control the behaviour of politicians and political parties. On Election Day however the police are assigned to the ECK, which then exercises control over police personnel assigned to it. This control, however, has not been effective. The police still regard their loyalty to the Commissioner of Police as a priority.

RECOMMENDATIONS

- Create more efficient, effective, and timely processes through which the ECK is able to mobilize police and judicial mechanisms to address election-related violations. For example, move complaint jurisdiction from the High Court to a lower court; strengthen ECK capacity to conduct investigations and to fine violators.
- Support the draft Political Parties Bill through civil society and/or donor advocacy efforts: the bill gives the ECK power to discipline political parties.
- Continue to train police on the significance of ensuring law and order, especially during an election period where it is essential in order to have free and fair elections.
- Encourage continuous dialogue between the ECK and stakeholders on the importance of adhering to the electoral code of conduct and the need to conduct political campaigns peacefully.
- Encourage the ECK to use its moral authority to regulate campaigns. The ECK can name and shame violators of the electoral code of conduct. Such initiatives have been undertaken by other institutions, and have proven useful.
- Support voter/civic education campaigns against voter bribery. Campaigns conducted in 2005 were notably successful.
- Support civil society monitoring of campaign financing and voter bribery

NOMINATION OF CANDIDATES BY POLITICAL PARTIES

According to the current constitution, an aspirant for presidential, parliamentary and local government elections must be a member of a political party. Consequently a candidate must be nominated by a party to contest an election. The ECK determines the period for nomination of candidates.

Actual procedures used by parties to nominate a candidate are left to the individual parties. In other words, each party is free to determine its own nomination rules and procedures. Nomination of candidates by political parties is thus critical in the context of the electoral process. If not conducted in a democratic, transparent, free and fair manner, the nomination process significantly weakens the entire electoral process. The extent to which parties nominate candidates in a free and fair manner is a function of the extent to which they exercise internal democracy.

The nominations of candidates by various political parties for the 2002 elections were by any standards undemocratic. The then president and chairman of the ruling party KANU, single handedly nominated Uhuru Kenyatta as the party’s presidential candidate. President Moi’s decision to impose a candidate on the party completely disregarded the party nomination rules. This unilateral decision by President Moi led to the defection of many leading politicians from KANU.

The nomination processes used by the opposition parties were also not democratic, transparent, free or fair. In a number of cases a party leader would simply issue a nomination certificate to a candidate who did not even present himself or herself for nomination. This was a wide spread malpractice of which
virtually all parties, including the then ruling party KANU, were guilty. The questionable party nomination process raises questions about whether or not the rest of the elections were free, fair and therefore democratic.

A number of reasons explain why political parties conduct nomination processes that are undemocratic. Most political parties are not institutionalized; as such, the rules do not matter much to them. A group of individuals or a single individual that owns a party has the latitude to dictate how to nominate and who to nominate. The nomination exercise is not supervised by an independent and impartial body, but by the party itself. According to the current law, the ECK does not have a mandate to supervise the nomination of candidates by political parties. The only major role that the ECK has in the nomination exercise is to scrutinize the applicants’ details and credentials to satisfy itself that the candidates meet the constitutional requirements.

The Political Parties Bill makes it less likely that parties would rely on individuals to finance their operations and subsume their nomination processes to the decisions of individual funders. Passage of the bill would also give the ECK powers to supervise political party candidate nominations, and, in the long run, would contribute to the institutionalization of political parties.

Capacity development for political parties, in various areas, has been ongoing. Before the 2002 elections, NDI, for example, conducted multiparty capacity development workshops, and worked with individual parties. The focus of these capacity building activities included campaigns and message development, redesign of platforms, party structure, increasing capacity of secretariats, and leadership qualities and qualifications. Six to nine months prior to election day 2002, NDI worked with the parties on coalition building, including such areas as consensus building and strategy development.

Following the elections, political party strengthening activities focused on capacity building at the national and provincial levels. At the national level, the focus was on the issues noted above as well as, outreach and communication, party decision-making, manifesto and constitution development, nomination rules, and political values and principles. At the provincial level, capacity development focused on such areas as communications and membership development. In addition, communication between national and local parties has been stressed in all activities. (IRI’s political party activities have focused on issue-based legislative agenda building.)

RECOMMENDATIONS
Enactment of the Political Parties Bill is needed in order to address the problems related to political party funding and ECK supervision of the nomination process.

- If passage of the Political Parties Bill is held up by disagreements, donors might consider supporting inter-party fora to foster dialogue and find compromises that would make it possible to pass the bill.
- If the Political Parties Bill passes, workshops/seminars for members of Parliament, political parties, the media, and the public would be essential to explain the contents of the bill. Wide knowledge would make it possible for watchdogs to monitor compliance.
- Promote democratic practice within political parties through party training.

COUNTING OF VOTES AND MANAGING ELECTION RESULTS
The counting of votes cast in an election is as critical as any other stage of the election process in determining the extent to which the elections are free and fair. The counting and tallying of votes must be accurate and the results reported accurately and speedily.
The importance of this exercise and the seriousness that voters attach to it is underscored by their vigilance. Voters are ready to, and do stay at counting halls the whole night. They do so in order to prevent interference with, and manipulation of vote counting. The ECK is thus under intense pressure to put in place vote counting arrangements.

For the first time in Kenya’s electoral history, vote counting was conducted at polling stations during the 2002 elections. This process was implemented to speed the announcement of results, and was intended to help eliminate the possibility of votes and ballot papers getting lost on the way to a central depository. Allegations of ballot papers getting lost on the way to the central counting centers had characterized all previous elections.

During the constitutional referendum of November 2005, ECK officials in the field used mobile phones to call in results from the counting centers to headquarters in Nairobi. This process helped speed the announcement of results and avoid possible manipulation of results. The ECK displayed results on notice boards in every counting centre immediately after they had been agreed upon by the agents of each side of the PNC divide. In addition, the media was on the ground and reported results at the constituency level as soon as the key stakeholders agreed upon the results.

While ECK, political party and civil society actors (i.e., media) are now reporting voting results, parallel vote tabulation, conducted by local observers, would help validate the technical count. Verification of the tally by neutral observers could be an important factor in ameliorating potential conflicts and violence, particularly in hotly contested areas.

RECOMMENDATIONS

- The procedure used for the 2002 general election and the 2005 referendum were perceived to minimize vote rigging and worked to the satisfaction of the stakeholders who felt it was transparent. Utilization of the systems for counting and announcement of results in 2007, would help ensure voter confidence and should be retained.
- Mechanisms to enhance quick tabulation and transmission of results, should be considered for support during the 2007 elections, if technical and human capacity could be made available in time.
- Consider parallel vote tabulation by domestic observers to verify election results and possibly ameliorate potential conflicts that may arise in hotly contested areas.

HANDLING ELECTION DISPUTES

Political parties, candidates and voters have a stake in the outcome of elections. Partly because of this reason, a number of disputes arise during the election period. Major election disputes revolve around claims of rigging; failure by government to issue identity cards needed to obtain voters’ cards; omission or wrong spelling of names in the voters’ register; late opening of polling stations; poor management of elections; use of government resources by the ruling party and its candidates; bribery of voters; violence and intimidation of voters; and, questionable counting and tabulation of results.

It is the responsibility of the ECK, in conjunction with the judiciary, to handle election disputes. The ECK handles disputes that lend themselves to political or negotiated solutions. These may include disputes about how many party agents are allowed in polling station, and disputes over the presence of campaign agents representing candidates in a polling station. The ECK may also adjust the time for opening and closing of polling stations if there is a complaint.
A major problem with regard to handling of election related disputes is the lack of enforcement mechanisms. Violence related disputes during campaigns, in particular, are hard to enforce, as the ECK is not in control of the police.

Complaints about major irregularities are ultimately solved in a court of law, and are based on election petitions. Election petition cases, however, take too long before they are concluded or determined. Some of the election petition cases arising from the 2002 elections, for example, are yet to be determined. Furthermore, the amount of money a complainant in an election case is required to pay as court fee is often prohibitive and beyond the reach of most ordinary Kenyan voters.

RECOMMENDATIONS

- Determination of election, and especially election petitions, needs to be speeded up, perhaps by establishing special election dispute courts. (Recommendation for Government; possibility for direct donor impact limited.)
- A period within which election disputes must be determined should set. This would ensure that election petition cases do not take too long as is currently the case. This report proposes six months. This can be achieved by establishing special election petition courts.
- Although it is necessary to charge a fee that will discourage frivolous court cases, the government should consider lowering the fee to levels that are manageable. (Recommendation for Government; possibility for direct donor impact limited.)

ELECTION OBSERVATION

The practice of observing elections has become an integral part of election activities in Kenya. Since 1992, the practice has been to have both local and international election observers.

In the 2002 elections, the ECK accredited 45,000 election observers. Out of these 40,000 were domestic while 5,000 were foreign observers who, in part, came from the African Union, the Commonwealth, and a consortium of resident diplomatic missions and development partners. Although opinion may differ on whether or not observers add value to the electoral process, there are a number of reasons why they should be used.

- The main purpose for using observers is to give credibility to the electoral process and results, which may in turn encourage larger voter turnout.
- Observers also act as deterrence to those who may plan to interfere with the smooth conduct of elections.
- The reports and recommendations of the observers may be useful for improving future elections. Observers generally submit their reports after an election has been concluded. The report of the K-DOP for example, was submitted about six months after the elections. Such reports are therefore not useful for correcting observed malpractices of the election at hand, but do have implications, and crucial lessons for improving the conduct and credibility of subsequent elections.

In 2002, donors supported the Kenya Domestic Observers Programme (K-DOP). It was composed of a number of faith based organizations, namely Christians (Catholic Justice and Peace Commission and National Council of Churches in Kenya), Muslims (Supreme Council of Kenyan Muslims, and Hindus (Hindu Council of Kenya), as well as Transparency International, the Media Institute, and Institute for Education in Democracy. The group began preparations approximately three months before the elections, but began actual work about two months before polling day. Nonetheless, the activity is viewed to have been a success.
A number of challenges and lessons learned have emerged from the K-DOP experience. No woman participated in K-DOP’s top management, i.e. Strategic Board. They were, however, well represented on the program side and in the pool of poll watchers and constituency observers. K-DOP partners were able to work together despite initial doubts among a number of its members about the level of prior experience some of their partners had in election monitoring. The Muslims and Hindus, for example, were observing elections for the first time, while the Catholics and the IED had previous experience with such activities. IED, in particular, provided the technical expertise in material development and training that none of the others could provide. As such, some partners felt that they contributed more than others, especially in terms of expertise and technical input. In addition, some partners indicated that they did work for which others took credit. The development of materials, for example, was undertaken by IED, but credit went to ERIS.

Difficulties also seem to have arisen from the manner in which the team was put together, and in terms of project ownership. Some participants viewed the arrangement as a forced marriage and did not fully accept or trust each other. IED indicated that that coordination by a team appointed by the donors was conducted in a manner that indicated that the partners had no say in the management of the project.

Partners, including IED, referred to the late start of K-DOP and to the lateness of financing. IED strongly recommended that whatever format is used for the 2007 elections, the observer program and team should be in place by January 2007, at the very latest.

Despite the problems, the K-DOP team accomplished its work and wrote a joint report.

Suggestions for future observer programs have been made by IED. For example, it is recommended that the group be expanded to include additional civil society organizations so that the observation group represents every category of voter including women, the disabled, the youth, pastoralists, etc.

IED expressed its willingness to participate in a future election observer program, only if the team was expanded to include more representative CSOs, and more organizations with varied capacities and expertise (a factor, from IED’s perspective, that was not considered in the formation of K-DOP). At present, IED works with a number of CSOs on 2007-related election observation issues such as campaign financing and violence against women candidates.

By beginning observation missions long before polling day, observers are more likely to have an opportunity to report and/or prevent election malpractices that are likely to affect the outcome and credibility of elections. Common malpractices include vote buying and zoning of particular regions that are declared exclusive zones of particular parties and become potential sources of violence. Concerns have been voiced that constituency boundaries may be manipulated to suit particular parties and regions. This is a particular worry for the 2007 elections because the boundaries will be reviewed before the elections.

Despite the success of the 2002 domestic observation effort, restrictions on observers limits the role they can play in ensuring that elections are free and fair. Observers, for example, do not have a direct line of reporting to the ECK through which they could flag problems or warn of impending violence or violations; they are also not allowed to intervene, even if they observe instances of malpractice. Active intervention is the responsibility of election monitors. By conferring the status of monitor on the observers, they would have the right to report violations to the ECK, immediately, so that the Commission could respond in time.

The Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers International Code focuses on a number of fundamental principles: Respect Sovereignty and International Human Rights; Respect the Laws of the Country and the Authority
of Electoral Bodies; Respect the Integrity of the International Elections Observation Mission; Maintain Strict Impartiality at All Times; Do Not Obstruct Election Processes; Provide Appropriate Identification; Maintain Accuracy of Observations and Professionalism in Drawing Conclusions; Refrain from Making Comments to the Public or the Media before the Mission Speaks; Cooperate with Other Election Observers; and Maintain Proper Personal Behavior. IFES has indicated that the “ECK Observation Regulation” is not fully in line with the International Code. To ensure that the ECK’s code of conduct for observers is in alignment with international standards, donors might consider supporting an effort to revise the ECK code.

Should snap elections be called, it is likely that a domestic observer mission could be organized in sufficient time to observe pre-election and election day activities. K-DOP partners have indicated that based on their past experience as an observer group, they could mobilize relatively quickly, i.e., within a month. K-DOP operations, however, would require donor funding; the time estimate assumes this funding is ready and available. In 2005, the Kenya Civil Society Referendum Observation Programme (KSCOP) mobilized 4,000 poll watchers who were deployed to 2,910 polling stations in 46 constituencies. The effort was initiated by local CSOs and begun planning and operation in November 2005.


The Institute for Education in Democracy (IED), and the Constitution and Reform Education Consortium (CRECO), developed a program framework for the project, on behalf of approximately 15 CSOs, and served as central institutions for this endeavor. Primary funding for the project was received from a HIVOS grant of Kshs. 6,551,200.00.

CRECO Secretariat attended a Trainers of Trainers (ToT) workshop, organized by IED, which prepared CRECO’s Programme Coordinator and Programme Officer to conduct training of poll watchers at CSO partner levels. Eleven training workshops were subsequently conducted by the CSO partners. Information about the referendum, which had been developed and produced by IED, was utilized and distributed to poll watchers through CRECO partners; monitoring and observation tools, also developed

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by IED, were produced and distributed by CRECO. Delivery of other training materials and accreditation cards from the ECK was coordinated through the CRECO Secretariat.

On polling day, IED’s secretariat acted as KCSOP’s coordination and media center. Referendum results from polling centers were compiled and collated using IED’s Geographic Information System (GIS) software. The KCSOP project, itself, was monitored by the CRECO Secretariat and CSO partners.

In implementing this initiative, KCSOP encountered financial and logistical challenges, and met with some successes that could inform similar, future activities. A number of accreditation badges, for example, were released late by the ECK; some polling stations were difficult to reach, and thus presented challenges for materials distribution; and, some organizations did not have sufficient funds to cover meals and transport for poll watchers and thus had to reduce the number of poll watchers fielded. Logistical difficulties delayed submission of written reports from the polls; mobile phones, however, provided an “interim verdict.” In additions, the “immensity” of the data entry work from the polls slowed the data entry process and report writing.

Despite the problems, KCSOP was able to develop valuable experience as an observer group. Some poll watchers in far flung locations, for example, were denied access to polling stations because presiding officers apparently did not expect them. In such cases, CRECO and IED informed the ECK, which then contacted the presiding officers. By midday, on referendum polling day, all accredited poll watchers had access to the polling stations. KCSOP partners believe they made a difference at the polls by deterring electoral malpractice, and view the relationship that CRECO developed with the IED and the ECK to be important for future, related operations.23

RECOMMENDATIONS

- A K-DOP-like arrangement is recommended for the 2007 elections because the group has accumulated sufficient experience both in terms of working together and in the process of observation, to make it useful. Donor discussion with the K-DOP partners about such an initiative would need to start early to ensure that partners begin a dialogue about the process of moving forward. In these discussions the issue of ownership of the programme should be given attention.
- Expanding K-DOP membership and/or its network would ensure greater inclusiveness. The donors may consider adding additional civil society organizations with different capacities and expertise. Given that more constituencies will be created for the 2007 elections, more observers will be required; additional civil society organizations could fill this gap.
- Inclusion of women’s organizations in K-DOP’s observer network would be useful, and inclusion of women in senior levels of its management, i.e., the Strategic Board, is important.
- The Kenya Civil Society Observation Programme developed experience in observing the 2005 referendum and should be considered as a partner with K-DOP or, if needed, as an alternative.
- For an election observer group to have maximum impact, it needs to have an effective communications strategy. One of the shortcomings noted in relation to K-DOP, was that it did not have a clear media strategy. As such, donors might consider supporting development of a strong and effective media strategy for K-DOP or any other observer group that may be supported.

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The ECK might consider redefining the role of observers and permit K-DOP to act as an election-monitoring group. This would empower the group to actively intervene whenever irregularities or malpractice is witnessed.

In order to do its job effectively, the media needs to understand the work being conducted by observers, as well as the issues that relate to elections processes. Media training on such issues would make elections reporting more accurate and open a wider dialogue between observer groups and the media. Such a dialogue would serve some of the communications needs of the observer groups.

INTERNATIONAL OBSERVERS

Experience has shown that international observers have more access to government officials than their local counterparts, and are given more attention by government than their domestic counterparts. In addition, international observers have easier access to media attention than domestic observers, perhaps because Kenyan media considers their presence more newsworthy.

As a consequence of their special status, international observers are sometimes able to sway public opinion. In some cases international observers have the stature necessary to leverage influence with protagonists during elections, and can therefore be helpful in resolving potentially violent disagreements. Like their domestic counterparts international observers add credibility to the process and results. International observers, however, are often not in country in the numbers needed to adequately cover the entire country and are sometimes resented because they arrive in country long after the pre-election rigging has taken place. In some case, these observers are also resented for nationalistic reasons.

RECOMMENDATION

- Despite possible resentments, international observers should be accommodated in the 2007 elections. Any international observer effort, however, should ensure effective coordination and start its observation activities as early as possible. As such, an initiative such as K-DICE would be more useful than more costly international observer groups that arrive in country relatively close to elections.
- International observer groups such as the Commonwealth delegation and the Carter Center would be useful in lending credibility to the elections. Commonwealth delegations would be invited because of Kenya’s Commonwealth status; Carter Center is considered to be credible and reputable.
- The ECK has noted its preference for dealing with a smaller number of international observer consortia. However, by accepting observers from other African countries it may be possible to build the culture and practice of the Africa Peer Review Mechanism.
VI. SUPPORT FOR THE ELECTORAL COMMISSION OF KENYA

DONOR ASSISTANCE TO THE COMMISSION

Donor support to the ECK has generally been directed to voter education and related activities; report and manual development and writing; organizational development; and, increasing the effectiveness of the institution through provision of computers and related training and networking (particularly, internet). Other donor-supported activities have included pilot projects for improved voter registration, and training of peace committees and poll watchers for the November 2005 referendum. Programs that are meant to enhance the ECK’s effectiveness in carrying out its various responsibilities have been implemented via a number of mechanisms: Support has been given directly to the ECK; it has been channeled through partnerships with organizations that must rely on the ECK for activity implementation; and, it has been extended to projects that cooperate with the ECK, but are implemented through external organizations.

Effectiveness of donor-funded activities has varied, often depending on the mechanism used. The human capacity and management constraints in the ECK, outlined in Section V, limit the institution’s capacity to conduct multiple activities simultaneously and to integrate projects that go beyond its work plan. These constraints are often exacerbated by poor coordination and communication within the ECK, and by management processes that at times impose activities on the institution without staff consultation. Without a sense of ownership among those in the ECK who need to participate directly, activities are likely to be further slowed. It is such factors that appear to have significantly delayed the start, and slowed the implementation of the EU/DFID-funded “Strengthening Democracy and the Rule of Law” project (August 2004 – August 2006). The project has directly supported ECK activities focused on improving voter registration (through pilot projects); sensitizing stakeholders to improve their knowledge and awareness of election laws and processes; voter education; and, building ECK capacity (e.g., by developing a Political Parties Act compliance unit, developing a central research unit, training of ECK Secretariat staff, and enhancing communications between national and district offices). A CIDA-funded school civic education program that requires ECK implementation, and is funded through IFES, has been held up since June 2005 because the Commission needed to concentrate its efforts and personnel first on referendum preparations, and then on constituency demarcation activities. As is noted in Section VI, several IFES activities, including a polling station infrastructure assessment and strategic plan implementation, have been delayed or slowed because of ECK capacity or political will issues.

A number of activities designed to support the work of the ECK have proven relatively successful – these, however, were less tied to direct participation by the Commission. For example, a media campaign conducted by Lowe Scanad, on behalf of the ECK, appears to have worked well (at least in terms of timely implementation). Project partners and contributors included the Royal Netherlands Embassy, DFID, CIDA, and the ECK. Scanad designed the campaign materials and consulted with the ECK to solicit its views and get its approval on the content of the advertisements and on the timing for broadcasts. The project was overseen, however, by a steering committee composed of the donors and the ECK, and by a financial management agent, Price Waterhouse Coopers.

In the case of the USAID and AusAID-funded IED project, “Strengthening Representation and Good Governance in Kenya” (September 2003 - March 2005), an audit of the national voters registers was conducted. The ECK was aware of the audit and facilitated the participation of its field officers in the
activity. It subsequently received a copy of the audit report, but was not involved in official consultations, with the IED, to discuss the report’s contents and reach consensus. Nonetheless, the Commission welcomed the report, although it questioned some of its figures. As a result of the IED-led activity, the ECK established local Voter Registration Committees and instituted the use of Chiefs to verify and confirm information contained in the report; it has also instituted consultations with relevant institutions to develop a framework for an integrated registration system. In addition, ECK field officers have been made more aware of the importance of revising and producing updated, accurate and credible voter registers.

Similarly, the UNDP-funded “Voter Education Project” (July 2002 - 2003) was conducted as a partnership between the IED and the ECK, with the ECK as the client partner. Activities included training of ECK officials (District Election Coordinators and Returning Officers), training and deployment of Community Based Volunteer Educators (CBVEs), production and dissemination of voter education materials, and a voter education campaign through CBVEs and radio programs. As noted in the project evaluation, “software” for the project was the responsibility of IED; this included “special knowledge and skills on how to conduct voter education, training of trainers, and development of information, education and communications (IEC) materials. The ECK, in turn, was to bring the hardware. This was contained in the nationwide infrastructure for voter education and constitutional mandate for electoral issues. As the client partner, the ECK was also expected to set standards for voter education and provide quality assurance.” A number of problems were identified in the case of this project, including lack of ownership by ECK Secretariat staff and some District Elections Coordinators (DECs); lack of time needed for the DECs to conduct oversight of civic education activities, because their regular responsibilities were too time consuming; and, a sense within the ECK that the IED did not have the needed capacity to develop capacity in the Commission. Nonetheless, joint IED/ECK civic education training of DECs and Returning Officers throughout the country, and implementation of the project in the nine pilot districts (mostly through IED implementation), proved relatively successful.

It should be noted that the UNDP-funded “Support to the Referendum” project supported the ECK directly for two activities: (1) ensuring transparency in the polling process through the presence of trained polling agents from the “yes” and “no” camps; and (2) prevention of violence through training of Peace Committees. An informal UNDP assessment indicates that these activities were implemented as proposed; a formal report is forthcoming.

A number of fundamental “lessons learned” can be derived from donor-funded programs thus far undertaken:

- More carefully coordinate donor-supported activities that require direct ECK participation.

Donors need to prioritize projects among themselves to avoid overload on the ECK and/or partners working directly with it. For example, IFES is scheduled to work with the ECK on a number of activities (some of which have already been delayed by other ECK priorities). In the coming months, donor/IFES-supported projects requiring ECK participation will include the CIDA-funded school civic education project, polling infrastructure assessment, and Basic Election Administration Training for district staff. At the same time, the ECK will also be focusing on constituency demarcation activities. From past experience, it is clear that some, if not all the donor activities will not be implemented because of ECK overload.

- Ensure that projects that require ECK participation are clearly reviewed, established, and agreed upon with the ECK.

The Commission changed its mind regarding activities to which it had committed in the context of the UNDP-funded “Support to the Referendum Project,” and the EU/DFID-funded “Strengthening
Democracy and the Rule of Law” project. In addition, based on an evaluation report, the ECK seems to have been less than comfortable with some elements of the UNDP-funded “IED/ECK Voter Education Project;” in a number of cases, activities to which the ECK had agreed with IFES, were also rejected or delayed.

- Where donors want and expect an activity to include relatively close collaboration with the ECK, this condition should be specifically noted in the project statement.

For example, in the USAID and AusAID-funded IED project, “Strengthening Representation and Good Governance in Kenya,” the IED conducted constituency mapping and a GIS database update with little participation by the ECK. Although it appears that no formal collaboration mechanisms were integrated into the IED project, there was an underlying assumption, in the case of the funders, that some level of collaboration would exist. The GIS/mapping project was clearly very weak in this aspect. The ECK sold electoral maps to the IED, and supplied it with a list of registration centers; however, it seems that it did not participate in the development of the GIS.

- Ensure that projects that require ECK staff involvement incorporate dialogue with, and participation of, ECK staff in the development of the project proposal. (This may be Secretariat staff and/or District or constituent level staff.)

It appears that ECK staff is often bypassed when project agreements are concluded with partner organizations. As a result, there is little buy-in from staff and thus a slower response to project activities and goals.

- Incorporate ECK staff development into all projects in which ECK professionals are involved.

In the long term, to increase the institution’s effectiveness, and the effectiveness of direct and or partnered donor assistance (i.e., assistance through organizations working directly with the ECK and requiring implementation through ECK), a fundamental change is needed in the structure and management style of the Commission. As noted in Section V, “The Electoral Commission of Kenya,” such a change could come from the commissioners themselves, if they accept their role as policy decision-makers and acknowledge the role of the Secretariat as a professional cadre of managers and implementers. Alternatively, to achieve the needed structural and functional changes, legal measures may be required to specify the role of the Secretariat in relation to the commissioners.

In addition to capacity issues that may hinder implementation of projects that go beyond the ECK’s work plan; the institution has experienced a number of difficulties with the donors and their approaches. These include:

- Support that is disjointed, i.e., support that is promised and/or given at different paces, depending on the donor.
- Donor support that is offered at the last minute.
- Funding that is inadequate to cover the particular scope of an activity (e.g., the ECK may need to produce 2 million posters, however the donors are willing to cover only half a million posters).
- Funding that does not come in time. i.e., donor funding is often needed on an immediate basis, rather than on a promissory note. Some payments need to be made quickly, at the time an activity is implemented. For example, to place ads in the media, the ECK needs to pay cash, up front. Payment for local election workers needs to be made within a short period of time. (The ECK has suggested that the donors may want to pay vendors directly.)
- General confusion about financial reporting and regulations. Different donors have different financial regulations and requirements. In addition, some of these requirements conflict with those of the ECK.
• Confusion about with whom in the donor community the ECK needs to deal when multi-donor activities are funded.
• Donor-supported activities that do not necessarily match the ECK’s work plan and, as such, are viewed as adding to the workload.

The universe of possible activities that the ECK is able to undertake, both in terms of capacity and institutional mandate, are limited. Working under the leadership of UNDP, donors have been able to support the work of the Commission, fund activities of interest to particular donors, and increase the impact of donor support by pooling funds. At the same time, this approach has reduced potential program redundancies and simplified funding and reporting processes for the Commission. By utilizing one point of contact, donors are also able to discuss and develop proposed activities and implementation mechanisms in a coherent fashion, and simplify for an already overburdened ECK, the process of multiple negotiations with multiple donors, about the same or related issues.

• Recommendations

A donor coordination mechanism for the ECK, particularly one in which a donor-funded coordinator is housed within the Commission would be useful for the ECK and the donors:

• The ECK would have support in dealing with financial and project reports.
• The ECK would have a central point of coordination through which the donors would liaise and which would eliminate confusion about points of contact in the context of multi-donor support.
• The donors would have a point of contact through which to assess the progress of donor-funded programs and through which other needs and issues could be identified.

**Additional Support to the ECK** - Recommendations for support to the ECK are noted in Section V, “Election Administration – The Electoral Commission of Kenya.” As a consequence of its human capacity and management constraints, support to the ECK that does not relate to direct capacity development for the organization and its staff, and/or that goes beyond the Commission’s immediate work plan activities, would perhaps be best be limited at present. As indicated in the next section on IFES, for example, assistance such as ICT training for ECK staff, or workshops on boundary delimitation, on which the Commissioners are now working, offer direct and much needed support to the ECK, while at the same time not excessively burdening staff. Activities that relate to the Commission’s interest and mandate that cannot be accommodated by the ECK (e.g., some voter education activities), might more usefully be channeled through partner organizations. Indeed, under current circumstances, it may be worthwhile to examine whether adaptation of the IFES Basic Election Administration Training, for example, should be left primarily for ECK staff, or whether alternative support for adaptation could be utilized to speed the process. In the event that the Human Resource Plan goes into effect and additional, qualified professional personnel hired at the ECK, a review of capacity to accommodate expanded funding support would be warranted.

**INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)**

Under contract with USAID, the International Foundation for Electoral Systems (IFES) has worked with the ECK since 2002. Its primary objectives have been to support improvements in electoral administration through the ECK, and improve the electoral enabling environment in Kenya. Because IFES works in partnership with the Commission, it is only able to implement activities that are approved by the ECK, and is only able to move as quickly as the Commission is able and willing.

**IFES Achievements and Obstacles**

IFES assistance has contributed to the objectives noted above, in varying degrees. Among its more notable achievements are the provision of commodities and related technical assistance to the districts and
headquarters; computerization of the Procurement and Supplies Department; and, improved communications between headquarters and the districts (most particularly through distribution of communications equipment). In addition, by being present and available to work with ECK staff, for example on work plan development, IFES has had a positive, albeit, informal impact on the development of the institution.

ICT equipment purchased by IFES in 2002, was delivered too late to have an impact on the General Elections. Nonetheless, the equipment has contributed to more effective electoral administration, particularly in the context of voter registration. The register of voters, prior to 2002, was centralized in ECK headquarters and hard copy records were transported from the districts to headquarters, where the data was processed. It is now possible, however, to load the register into each district computer and process transactions (additions, deletions, transfers) at the district office. Weekly registration reports are now generated through the computers, and hard and soft copies are delivered to headquarters. (Through an EU-funded internet-connectivity project, 55 of the 71 districts have internet connections and are able to send the data electronically.) Satellite phones make it possible for district officers (and returning officers) to communicate with headquarters. The IFES/ECK Computerization of the Procurement and Supplies Department (PASS) project should provide the ECK with systems that will speed procurement processes and provide the Commission with monthly reports on stock and fleet management. The project began in June 2003 and has been slowed by staff shortages within the ECK’s IT department, and by travel delays that affected an external consultant assigned to the project. Three modules have thus far been completed (stock control, provisioning and planning; and fleet management); the last segment of the project will focus on implementation of a 4th module, “warehouse,” and on training ECK staff.

Other activities that contributed to more efficient electoral processes have included design and production of ballot posters and samples of valid/invalid ballot papers that provided voters and polling/counting officials with important information in the 2002 elections, a number of by-elections, and the referendum held in November 2005. In 2002, a checklist for party agents assigned to monitor the polls was shared with NDI and the political parties; the instrument was used by NARC and KANU, and was subsequently utilized in by-election and the referendum. Distribution of standard protocols to polling stations during the 2003 by-elections served to speed the filing process required of polling officials. In addition, IFES supported a three day post-mortem workshop for ECK commissioners, senior staff and selected district coordinators, partners, and stakeholders in which lessons learned were extracted from the 2002 elections. These analyses served to inform the development of the ECK strategic plan.

Despite these contributions, a number of interventions proposed by IFES have been delayed or rejected by the ECK: a polling infrastructure study, which was to have been conducted in 2003-4, was postponed because of staff/funding issues in IFES. The project was again proposed in 2005, but then held up by referendum activities on which the ECK was concentrating time and staff. The Basic Election Administration Training for District Officers (BEAT) project, proposed for the latter part of 2005, has not moved forward because curricula development and adaptation requires ECK participation; as was the case with other activities (e.g., polling infrastructure study; CIDA-funded civic education project), the ECK did not have the time or capacity to work on this activity because it was busy with the referendum and with constituency demarcation activities. In 2002, the ECK refused to accept a comprehensive database for reporting and transmittal of election results because it did not want to supplant the system it had in place. The Commission also rejected training for Commission staff on issues related to development of realistic election calendars, and public relations and coordination with major stakeholders. A system for reporting preliminary results for 2002, suggested by IFES, was rejected because it was felt that such reports could be erroneous and could lead to violence. Nonetheless, reporting and transmission of preliminary results was to some extent implemented for the 2003 by-elections and the 2005 referendum. A communications protocol developed for the 2002 elections came too late for implementation, but has been used to a limited extent during subsequent by-elections and the referendum. (The protocol defines a
formalized system for communication and for distribution of materials.) Although IFES has noted that
the communications protocol will be fully utilized in 2007, implementation may continue to be hampered
by technical capacity gaps (i.e., lack of land lines and/or cell phones/networks that are required by the
protocol for voice reporting). As one observer also noted, old habits may also stand in the way of
complete implementation. Reporting through SMS technology, which IFES is encouraging, would permit
communications directly to computers located at headquarters and in the offices of returning officers.
ECK IT staff, however, is pessimistic that this technology will be used for 2007. It is believed that
implementation would require the time of the entire ECK staff – time that the staff cannot spare. (IFES
notes that the project only requires a half-day orientation; the relevant actors in the Commission would
clearly need to be convinced of this and of its importance.) Some initiatives that began with IFES
proposals are being undertaken or are awaiting assistance from other donors: this includes development of
a research facility and a voter awareness hotline at the district level.

**IFES’ work with ECK management and structural issues**

While a number of technical support activities have been implemented in whole or in part, activities
focused on management and structural reforms in the ECK have clearly been problematic. Ongoing
activities and fundamental reforms emanating from a Strategic Plan that was developed by the ECK, with
the assistance of IFES, appear to have gone through slow gestation and to have come up against resistance
from ECK leadership. For example, an analysis of the ECK’s structure began in 2003-4, and was
completed in 2005 with proposed structural adjustments included. The ECK plenary committee has thus
far rejected the suggested reforms. (The Gender and Diversity Policy has met the same fate.) Indeed,
review of the Strategic Plan itself has been held up by members of the ECK leadership who are
uncomfortable with elements of the strategic plan.

**Planned IFES Projects and Recommendations**

IFES has the capacity to deliver a wide range of assistance to the ECK; since the nature of its work
requires that it partner with and respond to ECK needs, however, the pace and extent of IFES activities
have often been limited. IFES hopes to work with the ECK on a number of technical issues including: (1)
two workshops that will enhance stakeholder participation in the boundary delimitation process and
provide comparative technical expertise in designing a boundary delimitation plan; (2) Basic Election
Administration Training for district staff; (3) completion of the PASS computerization project; and, (4)
ICT training for headquarters and district-level staff. These are activities that are useful, needed, and not
likely to generate strong objections from ECK leadership. Indeed, the ECK noted that it would like IFES’
assistance, particularly for computer-related training and training for elections officials. In the context of
computer training, however, a shortage of IT staff, past experience, and ECK suggestions indicate that
utilization of local expertise would be preferable to assistance from external advisors who cannot give
continuous hands-on support.

In developing programs for and with the ECK, IFES and the donors need to take into consideration the
time and human capacity limitations under which the ECK works. Clear priorities need to be established
so that realistic project goals are set in the context of ECK time and personnel capacity limits. For
example, the delayed polling infrastructure assessment that IFES suggests would take place in 2006,
requires the time of local (and perhaps headquarters) staff. Similarly, the Basic Election Administration
Training project is based on a presumption that ECK staff will contribute to the development and
adaptation of the basic curriculum. At the same time, a CIDA-funded civic education program that
requires ECK participation is pending, and the ECK continues to work on boundary delimitation. Based
on past experience, it is not likely that all these activities will occur. It has also become evident that
efforts to reform the ECK’s management style and structure have met with long and obvious resistance.
Unless there is a fundamental change in perspectives among ECK leadership, or legal reform that
redefines roles in the ECK, continued efforts to redefine the ECK’s structure and functions would likely
meet with relatively limited success, at least in the short term. As such, continued efforts in this area may not be an optimum use of resources.

VII. OTHER ACTORS AND ISSUES

ROLE OF THE MEDIA

THE LEGAL ENVIRONMENT FOR MEDIA IN KENYA

While the Constitution of Kenya ensures freedom of expression, and media protection may appear in some laws, rights extended to the media are often nullified by various legislative restrictions. A number of legislative acts serve to define the rights and restrictions pertaining to Kenya’s media. These include: The Books and Newspaper Act; Miscellaneous Amendment Act, Defamation Act, Telecommunications Tax Act, Communication Commission Act, Kenya Broadcasting Corporation Act, and the Official Secrets Act. The Defamation Act, for example, has been used to claim punitive damages from the media, and places a burden on editors, publishers and vendors. In the past, the Act has also been used by government to shut down newspapers that have been critical of it. The recent government raid on KTN and the Standard newspapers demonstrates that even the NARC government is determined to control the media.

Three bills that will likely impact the media further are currently under discussion. Sentiment in the Government of National Unity (GNU), which controls parliament, is considered to be hostile toward the media, sector representatives believe that these bills may pass -- unless they drop from the agenda because of election-related activities.

THE COMMUNICATIONS AND TECHNOLOGY BILL

The bill deals with frequency issues. Appended to it, however, are government rights to oversee broadcast content. The bill has been discussed and will likely be passed.

THE MEDIA COUNCIL OF KENYA BILL, 2006

This bill will establish a statutory oversight body to regulate media conduct. It is feared that through this body, government could re-introduce censorship of media via the back door. Parliamentary debate on the bill has not yet occurred. The parliamentary Committee on justice, constitutional and legal affairs has asked editors to give their input to the bill, which if passed would give the Media Council powers to punish breakers of the code of conduct for journalists and media practitioners.

THE FREEDOM OF INFORMATION BILL

At present, two drafts of the Freedom of Information Bill are being circulated: a Government draft that is based on the Australian model and is perceived to be somewhat restrictive, and a draft developed by the Kenya branch of the International Commission of Jurists, which seeks to guarantee public access to information on issues that impact the common good.
THE KENYA BROADCASTING CORPORATION (KBC)

KBC is a public broadcast media house and is protected in so far as it is established under an Act of Parliament. Because KBC has the widest reach in regard to both radio and television audience, negotiations between government and opposition parties for fair and equitable media coverage have always centered on Corporation. The KBC’s CEO, however, is a presidential appointee. In early May 2006, Mr. Wachira Waruru, CEO of KBC, was replaced by the government in a move widely read in media industry circles as a measure designed to curtail the politically independent and impartial editorial policy pursued by Mr. Waruru. To allow KBC a measure of freedom, it is suggested that an Act of parliament be passed requiring that the Public Service Commission appoint the CEO of KBC.

MEDIA IN THE MULTI–PARTY ERA

Kenya’s media outlets represent a broad spectrum of reporting styles, in terms of professionalism and neutrality, and Kenya’s media has the power to sway the populace toward violence and ethnic hatred. After decades of state control, especially of the electronic media, the explosion of independent FM radio stations and independent television are the most discernible indicators of a new era of a liberalized, freer media in Kenya. Expansion of electronic media choices is especially significant because radio is by far the most popular and most accessible information media for the majority of Kenyans. FM radio stations, in particular however, often represent political and/or ethnic interests and biases that can engender conflict.

Print media has traditionally been freer of government regulation, but readership is low relative to population, perhaps accounted for by low levels of urbanization, low levels of literacy, and high levels of poverty. As such, daily circulation for the best selling daily newspaper, the Daily Nation, is in the range of 300,000 copies. The second best selling newspaper, the East African Standard, sells about half of this figure, although its sales have recently witnessed a dramatic upswing, perhaps due to its editorial policy, which some Kenyans refer to as opposition journalism.

INDUSTRY REGULATION THROUGH THE MEDIA COUNCIL

The media’s concern about maintaining or increasing readership has often led to irresponsible journalism. In an effort to regulate itself, the media industry has established its own, independent regulatory body, the Media Council. The main objective of the Council is to enforce the Code of Conduct & Practice of Journalism in Kenya, a code developed, by the media industry, in 2000. The Council was launched in 2002 and began operations in 2004; its focus is on protecting and promoting media freedom and protecting the public from media abuse through public education about the roles, rights and responsibilities of the media.

Council membership is composed of eight stakeholders, including media-related membership organizations. These include: The Kenyan Union of Journalists; Media Owners Association; Editors’ Guild of Kenya; Kenya Correspondents’ Association; Alternative Press; Media Training Institutions; Media NGOs; and, Public Media.

Council activities are expected to include:

- Monitoring the media and identifying transgressions of the Code of Conduct. Enforcement mechanisms, however, are weak.
- Professionalizing the media via ethics seminars for journalists.
- Conducting research on how media covers issues such as corruption in public office, elections, and politics. This activity will collect evidence related to reporting content and style and how it is perceived by the public.
• Conducting public awareness debates and seminars for targeted audiences (e.g., for the judiciary, civil society, provincial administrators) to explain the role and functions of the media, and the public’s rights vis a vis the media.

RECOMMENDATIONS

• Conduct journalist training focused on ethics and on how to report on politics and public affairs issues including elections, political/economic issues, and issues that affect women. Periodic training is needed for media editors and reporters because there is frequent turnover in the industry.
• Support training for correspondents located in rural areas, who are young, and who are often badly paid (and thus possibly amenable to bribes from local candidates/politicians). These journalists produce approximately 65 percent of the news stories published in the press. It is thus critical that they are provided with training on ethics, journalism (writing and practices).
• Conduct fora for editors and media owners about ethics and objective journalism. In the run up to the 2002 elections, members of the informal Editor’s Forum agreed that because 2002 was a transition election, they would not to cover some hate speech, incendiary issues.
• Support mentor/partnership programs that link local and international journalists in Kenya as a means of fostering quality journalism.
• Support advocacy efforts focused on ensuring that professional oversight of a free media occurs independent of government.
• Support advocacy efforts focused on ensuring that media licenses are issued fairly by the Communications Commission.
• Support regular monitoring and reporting on how the media presents various critical issues, including treatment of female candidates/politicians, violence, and hate speech. By focusing on the presentations and how on they are perceived, media approaches may be reformed. Even if diplomatic missions monitor the media on a daily basis, it is not likely they will perform the same tasks as a CSO, i.e., conduct workshops for the media to bring biased or incendiary stories to the media’s attention and work on alternative presentations.
• Support capacity development programs for nascent media outlets that include commodities and training. Community radio is difficult to start up: it is difficult to get licenses and government does not give these stations tax exemptions. At present, for example, only two community radio stations exist: one, Radio Mangelete, is women-owned and located in Taveta; the other is Radio Lake Victoria. Radio licenses given in the past for community and urban radio stations could be returned because they have not been used. This may create an opportunity for those interested in starting radio stations to get licenses.
• Utilize radio listening groups and public education films to inform the public about the role of the media and the public’s rights in relation to the media.

YOUTH AND THE 2007 ELECTIONS

Young people have traditionally played a peripheral role in Kenyan politics and elections, with their participation largely restricted to providing security to politicians, attending political rallies, and mobilizing voters for or against particular political candidates. Partly because they lack resources and partly because they have generally lower levels of interest in governance, youth have been targeted by politicians for use as weapons in political contests. Many young people who attain the age of majority, and especially young women in the rural areas who typically marry before attaining the age of majority, lack IDs, which they need to register as voters. Perhaps the most important factor limiting young people’s effective participation in electoral politics is political socialization that has thus far placed a
premium on patriarchy and patronage (which favours wealthy, dominant male personalities), as well as gerontocracy (prominence given to elders in decision making).

Youth are key to the future of electoral and democratic development in Kenya, and evidence suggests that the youth will be a critical constituency in the 2007 elections. Indeed, the Minister for Immigration, Mr. Gideon Konchella, announced in early May 2006 that the government will expect to issue IDs to 4 million youths before the 2007 elections. By implication, 4 million new voters will potentially be added to the voters’ roll. This represents about 35% of voters registered at the time of the November 2005 referendum, which stood at 11,594,877.

Three distinct issues are central in the context of youth and elections (and politics in general):

- Election violence is generally perpetrated by young, unemployed males;
- A substantial number of Kenya’s youth do not or cannot participate in the system because they do not register or have problems with the registration process; and
- A cadre of alienated, frustrated educated young people exists in Kenya. This group has ideas, but does not have avenues through which to participate; it wants to have an input into the political system and political decision-making processes but views the current generation of politicians as an obstacle to its participation and ambitions.

Politically ambitious young people appear to be frustrated by current political parties. They seek:

- More political control of parties and to be a part of the nominations decision-making process;
- Seats on party executive boards;
- Participation in developing party agendas; and
- Party platforms that address issues relevant to them.

NDI has conducted a youth training program and, after 2002, began working with youth leagues. Young people are educated about the role of political parties and of youth in multiparty democracies, principles of political participation, fundamental political values, quality and qualifications of leaders, and party activities (e.g., constitution and manifest development, party structure). A number of young people who participated in the youth training program have won elected office. In addition, young people have been supported in conducting youth mobilization activities and awareness campaigns.

RECOMMENDATIONS

Youth Violence

- Support civic/elections education in party youth leagues. Such education would increase the political sophistication of party youth league members and make them less amenable to cooptation into the cycles of violence.
- Engage young persons in the electoral process more substantively, for example, by recruiting them as polling clerks, supervisors, and as observers of election violence and other election malpractices.

Unregistered Youth

- Support media campaigns to encourage youth to register.
- Conduct school outreach/civic-voter education programs.
- Support voter registration events to encourage registration of youth.

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25 ECK data
Educated and alienated youth

- Support initiatives such as leadership development programs and fora for young professionals to foster increased participation by young professionals, in the political system. Many young professionals who are interested in good governance would like to stand for political positions but are concerned about the funding necessary to run campaigns. They could run on ballots of existing parties or establish new parties with clear agendas focused on good governance. To catalyze such initiatives, leadership development programs and fora for young professionals would be useful as platforms through which new candidates and possibilities for forming new parties could be examined.
- Support for aspiring young politicians could be extended through a trust fund, similar to that which exists for women candidates, to help defray costs for such activities as developing party manifestos, campaign posters, and the cost of poll watchers. Since this group is more likely to have the wherewithal to raise some funds, the youth trust fund could match funds put up by the candidates and/or new parties.
- Support for young, aspiring candidates, through such mechanisms as those noted above, would also expand opportunities for women’s participation in the political process. Women are increasingly taking leadership roles in student unions and professional associations; this cohort is thus developing the skills and capacity to move into the political arena.
- If party/parliamentary assistance is given, include a focus on the role of younger party members and MPs.

GENDER AND THE ELECTORAL PROCESS

A relatively small proportion of women run for elective office, at any level, and few are nominated/elected for these positions.

- In 1992, 6 women were elected to the Kenya National Assembly and one woman was nominated. Female representation in the Assembly thus stood at 3.5 percent.
- In 1997, parties were required to ensure that one-third of their nominated MPs were women. Nominated women comprised 3.6 percent representation in the Assembly.
- In 2002, of the 1,035 candidates nominated to run for National Assembly seats, 44 were women. Of those, 9 women were elected and 8 nominated to the Assembly. The total number of women constituted 7.6 percent of the Assembly. The number of men elected was 210.
- Of the 4000 councilors elected and nominated in 2002, 253 were women. Of these, 98 were elected, while 155 were nominated.

A number of explanations may account for this low level of participation and representation in the structures of government:

- Traditional attitudes and cultural prejudices that are often accepted by women themselves tend to restrict options and opportunities for women. It is generally accepted, for example, that men should hold public office. As such, many women are not likely to consider candidacies, even at the local level, or to vote for other women.
- Lack of family support, a product of the cultural prejudices, dissuades women from contemplating political positions.
- Acts of intimidation and violence perpetrated against candidates and voters, throughout the electoral process, inhibits participation both of potential candidates, as well as of female election observers. Reports also indicate that during the 2002 elections, attempts were made to intimidate female Presiding Officers and that female electoral officials were treated more aggressively by agents and politicians.
• Lack of financial wherewithal makes it virtually impossible to break through political party barriers and win nominations.
• Gender insensitive speech discourages women’s entry into the political fray.
• Behind the scenes deal making through which candidates are chosen is generally the domain of the men and thus not a likely forum through which women would get a chance to be nominated. Because women are not considered to be likely to win, parties tend to be reluctant to nominate them.

GENDER AND ELECTORAL PROCESS: DONOR-FUNDED SUPPORT

Support programs such as the Engendering the Political Process Programme (EPPP), which ran from September 2001 through December 2002, have focused on increasing women’s participation in local and national political processes, including political parties. Areas of support included: gender sensitive voter education; capacity building for women electoral aspirants; advocacy and lobbying; campaign monitoring; and, gender sensitive media coverage. The mid-term EPPP review (November 2002) notes a number of program issues that affected the project’s success. These include: lack of strategic targets; lack of a clear plan for achieving these targets; insufficient attention to lobbying and advocacy; insufficient attention to concerns regarding funding of candidates; limited gender and governance focus; and little emphasis on civic elections. The final project evaluation indicates that activities tended to place primary focus on supporting candidates, while paying less attention to structural areas that impinge on women’s political participation. In addition, the evaluation points to the “fractious nature of the women’s movement in Kenya” and the detrimental effects it has on the impact and effectiveness of some efforts.

The donor-supported Gender and Governance Program (GGP), which officially began in September 2004, is the successor to the EPPP. GGP has 37 partners; 31 of these partners are members of one of four coalitions comprised of women’s organizations.

The GGP indicates that it will pursue five strategic objectives: Strengthen the legislative, policy and institutional framework for gender equality and equity; Enhance equality, equity and women’s empowerment in political party and other political processes; Enhance and support institutional capacities of implementers to effectively manage the Gender and Governance Initiatives; Mobilize support for women at all levels of governance; and, Promote participation of youth at all levels of governance and democratic processes. The project commits to delivering 59 expected outputs between 2006 and 2007. Following an initial attempt to get the program going, the GGP has revised its approach and is reviewing proposals that respond to its current focus. Among the recommendations made by an outside review of GGP, the Project is advised to: (1) develop a strategy with an overall common vision, mission and objectives and, (2) encourage coalitions to be formed around themes so that there is a common understanding and cohesion.

Based on discussions conducted with some members of the GGP, the program has faced both procedural and issue-specific problems. It is noted, for example, that the coordinating body missed a step in drafting the project, by not reviewing proposals submitted in order to harmonize the project. Because of the problems faced by the GPP, project participants are now creating and implementing at the same time, and are wasting a lot of time on process. More specifically, participants noted that the project does not indicate the shape civic education should take in the context of GPP activities, nor is it clear what kind of work should be done in relation to women candidates. An initial mapping exercise related to women’s participation, conducted by GPP participants, was viewed as being too broad both geographically and in
terms of criteria (i.e., guiding principles on what was being mapped were limited). As a result, organizations were asked to scale back when funding seemed to be more restricted.26

International organizations such as NDI and IRI have also supported women’s participation in the political process. NDI, for example, worked with women, in multiparty workshops, on identifying barriers within parties that prevent them from fully participating in party activities and contesting for parliamentary seats. Pending funding, NDI will work with these women and the parties on addressing obstacles. IRI expects to conduct a campaign school for women and youth. Topics included in the week-long training would include Message & Strategy; Communications/Working with the Media/Campaign Speeches/Public Speaking; Campaign Planning; Grassroots Mobilization; Fundraising; Managing Campaign Budgets; Utilizing Polling; Volunteer Recruitment and Management. A number of these areas overlap with areas of GPP interest; as such, coordination between the two activities would be useful.

A vehicle such as the EPPP or GPP is valuable in that it is able to coordinate a large group of local organizations focused on one general issue. The expectation that a unified vision and goal would serve as the overarching framework for participant activities is certainly appealing. In addition to its focused agenda, such a vehicle is also appreciated by the participating CSOs because it gives them room to plan activities instead of worrying about continuous funding needs.

Based on project evaluation reports and interviews noted above, however, the ideal of the coordinated whole working around a coherent agenda, does not seem to have been achieved. To make the effort more manageable, administratively and technically, it may be useful to consider simultaneous support for two to four such vehicles: each coordinating vehicle would focus on a different aspect of the broad area of women’s political participation, and no participating organization would be permitted to be a member in more than one group. While there is much expertise in Kenya, it would likely be useful to pair each such coordinating vehicle with an international organization that has wide experience in the individual area of focus to serve as advisor and source for technical assistance and organizational support.

RECOMMENDATIONS

- Foster women’s leadership in the political process at the local level. To improve their chances in the party and political system, and thus of being selected for local authority seats, women need to make themselves visible and useful to the parties, for example by mobilizing potential voters for the party. By establishing credibility and by fostering strong constituency relations at the local level, women increase their chances of garnering voter and party support and of moving up in the system.

- Support a Trust Fund for women. The lack of financial wherewithal is one of the fundamental barriers to women’s participation in a system driven by money. In addition, because women candidates are threatened with violence, they need to find ways to safeguard their lives. A Trust Fund would help pay for security, campaign materials, transportation, visibility (press, media), and observers in constituencies where women are running.

- Support passage of the Political Party Bill with relevant gender-sensitive section intact. Part IV, section 3 of the draft bill states that 15 percent of monies allocated to the Political Parties Fund would be distributed proportionately depending on the votes garnered by each party and the number of women elected.

26 Action Aid the implementing organization for GPP, and a sample group of organizations that were members of the EPPP and GPP were interviewed. The scope of work for this report required that the team assess numerous elections-related issues. Because of time limitations and the number of issues that needed to be covered, the team was able to conduct a limited analysis of the GPP.
• Provide consistent capacity development support and mentoring, on issues and media relations/presentation, to female candidates and office holders from the local to the parliamentary level. Capacity development should include training on all issues, not just those considered to be “gender issues.” Mentors could include present and past female office holders; technical assistance could be provided through CSOs and local professionals working on a pro bono basis.

• Foster a media initiative to increase the profile of female office holders and candidates from the local to the national level (e.g. disseminate articles on success stories that could be picked up by the media). The primary focus should be on the issues and on the office holder’s ability to perform.

• Provide capacity development for active female members of political parties to enable them to expand political space for women in the parties.

• Mentor young women (e.g., through university women’s clubs/organizations and professional organizations) to increase the pool of potential female candidates. Mentorship should particularly come from female political leaders and organizations focused on strengthening women’s political participation.

• Conduct civic education programs that emphasize the role of MPs, accountability of government officials, and the voters’ right to representatives that work on their behalf and in their interests. Such a focus may encourage voters to look beyond gender and vote for the person they think could best deliver -- including a woman.

GENDER AND GOVERNANCE PROGRAM

• Consider reducing the number of outputs and developing a more coherent and focused project.

• Emphasize implementation of goals related to continuous and focused civic education.

• Consider the possible effects on the project of a women’s movement that is divided along ethnic/tribal and political lines, as well as turf battles.

• Support ad-hoc coalitions focused on a particular initiative or target.

• Strengthen project administration and coordination by engaging an experienced project manager who has technical and administrative experience.

• For future programs umbrella programs focused on women’s political participation, consider simultaneous support for two to four such vehicles to make the effort more manageable, administratively and technically. Each vehicle would focus on a different set of aspect of women’s political participation.

CIVIC EDUCATION

From independence until 1992, Kenya operated a one party system of government. Under this system voter and civic education was minimal because the government was not keen to expose Kenyans to meaningful civic and voter education. This was perhaps the case because of fear on the part of the government that an enlightened citizenry might demand accountability and transparency in the management of public affairs. Elections were mere rituals conducted to fulfill a constitutional provision that they must be held every five years.

Following the opening of democratic space, and especially with the introduction of multiparty politics, civic and voter education became necessary and popular. As indicated in a civic education analysis by Finkel, et. al., the utility of civic education is broad. It encompasses: 1) civic competence, or the extent to which the individual has the knowledge, awareness and personal capabilities to influence the political process; 2) engagement with politics, including the individual’s level of political interest, attentiveness to politics in the mass media, and actual participation in the political system; and 3) democratic values,
encompassing adherence to the values of political tolerance, support for the rule of law, support for democracy as a system of government, and trust in others and in democratic political institutions.\textsuperscript{27}

A number of actors have taken part in civic education initiatives broadly conceived, and in voter education. These include the ECK, media and a variety of civil society organizations and NGOs. There is a general perception that as a result of these activities, most Kenyans are sufficiently exposed to both civic and voter education. While this is largely true, there are a number of reasons why Kenyans should continue to be exposed to voter and civic education.

- There are new voters every time elections occur. The newly registered voters require exposure to voter education.
- Legal and regulatory changes continue to be passed. Voters must therefore be exposed to these changes before each election.
- Kenyan citizens are very interested in good governance and are therefore a receptive audience for civic education. They have become increasingly vigilant, are demanding more accountability, and are participating more effectively in governance.

Based on the experiences of organizations that have conducted civic education in Kenya and abroad, a number of methodologies that have proven successful in the delivery of civic/voter education including:\textsuperscript{28}

- Education with entertainment component (e.g. interactive theatre)
- Civic education linked to relevant activities to enforce what is being learned
- Education implemented by facilitators with a link to the community (i.e., not persons organizations who do not belong to the community)
- TV/radio programs with clear messages – linked to listener discussion groups
- Community Radio
- Interactive theatre
- Video Kiosks (tap into intermission with civic education messages)
- SMS technology/Internet

\textit{Gender and civic/voter education:} In most cases, gender issues are integrated into civic education in one of two ways: women’s organizations implement civic education programs and/or gender issues are included in civic education curricula. When civic education is conducted by civil society organizations that are not particularly focused on women, strategies to ensure that women are able to participate in the civic education programs and activities are often missing. This appears to have been the case, for example, in the IED/ECK voter education program funded by UNDP from July 2000 to November 2002.

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Similarly, media civic/voter education programs are most effective if they focus on targeted groups such as women. The final report of the ECK-Media Campaign Programme implemented through Lowe Scanad Limited, for example, indicates that “more men have access and read newspapers, listen to the radio, and even watch TV than women.” As such, media campaigns should have “a complementary program specific for women running simultaneously with the other main one.” It is further suggested that it would be useful to utilize “media that is skewed to women,” such as family programs, to carry civic/voter education messages.29

RECOMMENDATIONS

Based on project evaluations conducted for donor-funded activities it is clear that:

- Voter/civic education activities need to be “contextualized,” i.e., strategies and messages need to focus on specific target groups such as women, youth, and uneducated voters.
- Voter/civic education would benefit by focusing on behavioral change, rather than on concentrating only on provision of information/education.

In addition,

- Implement civic/voter education as a consistent, long-term activity, not one that is conducted only before elections.
- Integrate civic/voter education into the school curricula.
- Piggyback civic or voter education projects on other programs (e.g. utilize existing mechanisms such as NCEPII radio programs implemented by Intermedia, and the EU Public Participation in Decentralized Resources Project, which works with local NGOs on education related to accountability).
- Link civic/voter education to recruiting effective leaders and holding them to account. Voters need to understand why they are voting – what elections mean to their lives; what to expect from their representatives, and what they can do if their representatives do not represent their interest.
- Expand the media/communication component of civic and voter education programs, in general, in order to reach the largest number of citizens.
- Invest in more technical and organizational capacity building for program implementers.
- Address ethnicity issues more coherently in civic education curricula because they serve as a fundamental cause of division and conflict in Kenya.
- Fast track NCEPII and prioritize election scenario issues, e.g., peace/reconciliation/nationhood.
- Make more use of local resources such as local facilitators, community resource centers, community radio, houses of worship.
- Support collection of baseline data which is necessary for effective delivery of civic education.

CIVIL SOCIETY AND ELECTIONS

Civil society in Kenya is widely recognized as more vibrant, diversified and institutionalized than in many other countries in the East and Southern African region. Whereas developmental NGOs appeared on the scene much earlier in view of the country’s authoritarian past, democracy and governance civil society organizations (CSOs) mushroomed from the early 1990’s onwards, in response to the opening of political space. This proliferation was largely due to donor funds that were made available to support the

deepening of democracy and empowerment of citizens to more effectively participate in their own governance.

This supply side strategy has borne considerable “fruit,” in terms of cultivating popular demand for reform. The successful campaigns against the PNC could in part be attributed to the contributions made by civil society through awareness creation about citizen rights and roles in governance. The 2002 elections also demonstrated in very direct ways that civil society, or at least individuals nurtured within it, had graduated from merely creating demand for reform, to forging formidable vehicles for change and creating a critical mass of reformists and change agents. Indeed, the coming together of the opposition parties, i.e., through NAK, was championed by civil society.

The maturity of civil society in the political domain, however, is also its weakness. Part of the problem with civil society today is that since 2002 elections it has behaved as if it is part of government. This is the case because many of the former leaders of CSO were co-opted into government. They include Mr. John Githongo former Director Transparency International Kenya Chapter, and Professor Kivitha Kibwana of CLARION and NCEC. For a while, those who remained in civil society organizations worked as if civil society was now part of government and that it was therefore its duty to support government. The challenge for civil society is to recognize its role as that of keeping the government on its toes.

THE THREAT OF DE-REGISTERING NGOS

Claims abound about the government’s intention to de-register a number of NGO’s, many in the democracy and governance sector, purportedly for non-compliance with regulations under the NGO Coordination Act. At this point this possibility can only be regarded as a matter of conjecture. Obviously such a move could jeopardize elements crucial to ensuring free and fair elections in 2007, including civic education, observation of violence and other election offences, media monitoring, and training for politicians (especially women and young aspirants), and political parties.

RECOMMENDATION

• Capacity support for civil society organizations would be helpful in developing a wider cadre of institutions that are perceived to be objective and effective, and which could thus play a role in election-related and other governance activities.

VIII. PRIORITIZED LIST OF ISSUES AND RECOMMENDATIONS

Factors that may have the greatest impact on the 2007 election, based on the assumptions made for this report, are listed below in their order of importance. Assumptions that have been are: the 2007 election is likely to be divisive if opposition forces cannot unite in time; the current government will not take extraordinary and illegal measures to maintain its hold on power; civil society organization that in the past have been involved in support of free and fair elections, are ready to resume such work; and, a snap election is not likely to be called.

Throughout the report, recommendations follow issue discussions. For the priority issues listed below, only the most critical interventions are noted. Details related to these recommendations are included as part of the substantive discussion in the text; as such, the recommendations are generally noted in brief in this section. In some cases, programmatic intervention is not possible; nonetheless dialogue, policy discussions, and diplomatic efforts could be useful.

1. POTENTIAL FOR VIOLENCE

The 2007 election environment may be marred by violence if the opposition fails to unite and elections become hotly contested, and/or if the public believes the government is determined to win the elections at all costs (i.e., that it will rig the elections).

RECOMMENDATIONS

- Re-establish the Central Depository Unit (or a similar mechanism), preferably in an expanded form. Through its presence, the Unit served to deter violence; it also monitored, documented and reported on issues of violence.
- Strengthen the ECK Peace Committees so that they are able to function as monitors of violence, act as mediators, and report violations to the ECK.
- Initiate diplomatic advocacy, such as that used in the run-up to the 2002 election, through which the diplomatic donor/community made it known that it was watching events.

2. ROLE OF THE MEDIA

Kenya’s media plays an important role in shaping the views of the public. During an election period this power is critical in exacerbating or calming tensions and potential violence. Supporting efforts that would constrain media penchants for sensationalism that may generate conflict and violence, is essential.

RECOMMENDATIONS

- Support training for journalists on ethics, journalistic practices, and on the issues they are covering and that are being discussed as part of the election campaign.
- Support fora for editors and media owners to develop a code of conduct related to the elections and establish mechanisms to regulate themselves.
- Monitor the media for its coverage on such issues as hate speech, gender issues/female candidates, and youth in the political process.

3. VOTER REGISTRATION

It is vital that the voter registration process is accurate, efficient and reliable. “A faulty voter registration exercise could easily alter the voting pattern, denying people a free and fair election.” Suspicions regarding registration could result in “tensions and fears as experienced in November and December 2002.” In addition, problems related to the registration of youth in the past election have focused attention on the need to bring young voters into the process.

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RECOMMENDATIONS

- Conduct voter education to inform citizens about the continuous registration, inspection of registers, and attendant procedures.
- Support activities that reach young people and encourage them to register, e.g., school voter/civic education programs, media campaigns, and special events.
- Support policy dialogues that encourage government, in conjunction with the Electoral Commission, to consider issuing ID cards and voters cards at the same time.

4. CONSTITUENCY DEMARCATION REVIEW

Constituency demarcation is undertaken approximately every ten years. Potential exists for this exercise to become politically explosive. The ECK Chair has expressly challenged parliamentarians to make a commitment that they would not block constituency demarcation recommendations made by the Commission.

RECOMMENDATIONS

- IFES expects to sponsor two workshops: (1) Workshop for stakeholders including the ECK, political parties, civil society organizations, and relevant government agencies. An international expert and local expert will discuss, with participants, comparative experiences in boundary delimitation in transition societies. Stakeholders will explore how different models might function in the Kenyan context, and make recommendations as to how the ECK might approach the exercise. (2) Workshop for ECK and IFES experts to examine boundary review data and develop possible boundary review scenarios/models. Implementation of these workshops would be useful in educating relevant stakeholders and commissioners.
- Policy dialogues and diplomatic discussions could useful in focusing attention on (and demonstrating concern about) potential for violence to which a politically motivated constituency demarcation exercise could lead.

5. POLITICAL PARTY CANDIDATE NOMINATION PROCESS

Political parties are free to determine their nomination rules and procedures. If, as is generally the case, these procedures are not conducted in a free, fair, and transparent manner, the entire electoral process is weakened. The Political Parties Bill addresses a number of critical election-related challenges including campaign finance and conduct. In addition, provisions of the bill provide the ECK with a mechanism through which it could more readily enforce laws and codes of conduct related to nominations and campaign financing.

RECOMMENDATIONS

- If passage of the Political Parties Bill is held up by disagreements, donors might consider supporting inter-party fora to foster dialogue and find compromises that would make it possible to pass the bill.
- If the Political Party Bill passes, workshops/seminars for members of Parliament, political parties, the media, and the public would be essential to explain the contents of the bill. Wide knowledge would make it possible for watchdogs to monitor its compliance.
6. ENFORCEMENT OF CAMPAIGN REGULATIONS

Campaign regulations are aimed at ensuring that political parties and candidates do not use public resources; that violence is minimized, particularly through adherence to election codes of conduct; that politicians do not incite voters or use their supporters to intimidate opponents and their supporters; and, that candidates do not use abusive language against each other.

RECOMMENDATIONS

- Support the draft Political Parties Bill through civil society and/or donor advocacy efforts: the bill gives the ECK power to discipline political parties.
- Continue to train police on the significance of ensuring law and order, especially during an election period where it is essential in order to have free and fair elections.
- Encourage the ECK to use its moral authority to regulate campaigns. The ECK can “name and shame” violators of the electoral code of conduct. Such initiatives have been undertaken by other institutions, and have proven useful.
- Encourage continuous dialogue between the ECK and stakeholders on the importance of adhering to the electoral code of conduct and the need to conduct political campaigns peacefully.
- Support voter/civic education campaigns against voter bribery. Campaigns conducted in 2005 were notably successful.
- Support civil society monitoring of campaign financing and voter bribery.

7. ELECTION OBSERVERS

Election observers add value to the electoral process, and in particular act as deterrence to those who may plan to interfere with the conduct of free and fair elections. This deterrence may in turn encourage larger voter turn out. A domestic observer program should be initiated and established as early as January 2007. Where possible, international observers should also arrive in the country at least three months before elections are held.

RECOMMENDATIONS

- Support domestic observation by civil society and faith-based groups, preferably as a consortium.
- Encourage the ECK to permit a domestic observation consortium to act as monitoring rather than as an observer group. Such designation would give participants a greater role and responsibility for immediately reporting violations and making efforts to stop them.
- Accommodate international observers.

8. STATUS OF THE ECK CHAIR AND COMMISSIONERS

The term of office for some ECK commissioners, and its Chair, are due to conclude by December 2007; multi-party elections in Kenya are generally held the last week of December. Questions have been raised about the security of tenure for the ECK commissioners, particularly the Chairman, i.e., whether there terms will be renewed. Such changes could have significant impact: non-renewal of the Chair could result in a weaker and politically compromised ECK. In addition, commissioners are often directly involved with election administration issues and implementation; as such they carry with them experience and institutional memory.
RECOMMENDATIONS

- Renewal of terms (for the Chair and other commissioners) is possible and legal. As such, donors may wish to consider expressing support for renewal of the Chair’s tenure to avoid gaps and confusion that may occur if he is removed so close to elections.
IX. TIMETABLE FOR POTENTIAL DONOR ACTIONS*

* Definition of Time Periods: Short term – up to 7 months; medium term – 8 months through to elections. Long-term activities could be undertaken for the 2007 elections or could be considered thereafter.

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<td><strong>PRIORITY List</strong></td>
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<td>Violence</td>
<td>Re-establish the CDU for 2007 (By July 2006)</td>
<td>Encourage ECK-stakeholder dialogues regarding Code of Conduct</td>
<td>Conduct civic education that links violence to ethnicity/religious tensions/marginalization and competition for resources in programming</td>
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<td>Strengthen ECK Peace Committees (July 2007)</td>
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<td>Initiate diplomatic advocacy, such as that used in the run-up to the 2002 election, through which the diplomatic donor/community made it known that it was watching events.</td>
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<td>Media</td>
<td>Support training for journalists on ethics, journalistic practices, and on the issues they are covering and that are being discussed as part of the election campaign. (Begin the process by January 2007)</td>
<td>Support advocacy efforts focused on ensuring that regulation of a free media occurs independently of government.</td>
<td>Support mentor/partnership programs that link local and international journalists in Kenya as a means of fostering quality journalism.</td>
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<td>Support fora for editors and media owners to develop a code of conduct related to the elections and establish mechanisms to regulate themselves. (Begin the process in January 2007)</td>
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<td>Support capacity development programs for nascent media outlets that include commodities and training.</td>
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<td>Monitor the media for its coverage on such issues as hate speech, gender issues/female candidates, and youth in the political process. (Immediately)</td>
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<td>Support advocacy efforts focused on ensuring that media licenses are issued fairly by the Communications Commission.</td>
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<td>Utilize radio listening groups and public education films to inform the public about the role of the media and the public’s rights in relation to the media.</td>
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<td>Voter Registration</td>
<td>Conduct voter education on the registration exercise to sensitize citizens on the continuous registration, inspection of registers, and attendant procedures. <em>(July 2007 and continue as necessary)</em></td>
<td>Conduct voter education to inform citizens about continuous registration, inspection of registers, and attendant procedures.</td>
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<td>Constituency Demarcation Review</td>
<td>Support activities that reach young people and encourage them to register; e.g., school voter/civic education programs, media campaigns, and special events. <em>(Immediately)</em></td>
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<td>Political Party Candidate Nomination Process</td>
<td>Support policy dialogues that encourage government, in conjunction with the Electoral Commission, to consider issuing ID cards and voters cards at the same time. <em>(Immediately)</em></td>
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<td>Enforcement of Campaign Regulations</td>
<td>Support IFES-conducted stakeholder and ECK workshops on boundary demarcation.</td>
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<td>SUPPORT POLICY DIALOGUES THAT ENCOURAGE GOVERNMENT, IN CONJUNCTION WITH THE ELECTORAL COMMISSION, TO CONSIDER ISSUING ID CARDS AND VOTERS CARDS AT THE SAME TIME. <em>(IMMEDIATELY)</em></td>
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**Support advocacy for the drafting and passage of a campaign finance bill.**
## ASSESSMENT OF THE PRE-ELECTORAL ENVIRONMENT

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<td>Continue to train police on the significance of ensuring law and order, especially during an election period where it is essential in order to have free and fair elections, should continue. (From July 2007)</td>
<td>Support civil society monitoring of campaign financing and voter bribery.</td>
<td>Support advocacy for whistle blowers protection law.</td>
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<td>Encourage the ECK to use its moral authority to regulate campaigns. The ECK can “name and shame” violators of the electoral code of conduct. Such initiatives have been undertaken by other institutions, and have proven useful. (Immediate and continuous)</td>
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<td>Encourage continuous dialogue between the ECK and a stakeholder needs to be conducted on the importance of adhering to the electoral code of conduct and the need to conduct political campaigns peacefully. (Immediate and continuous)</td>
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<td>Election Observers</td>
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<td>Support domestic observation by civil society and faith-based groups, preferably as a consortium. (By January 2007)</td>
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<td>Encourage the ECK to permit a domestic observation consortium to act as monitors rather than as observers. Such designation would give participants a greater role and responsibility for immediately reporting violations and making efforts to stop them. (Start negotiations immediately)</td>
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<td>Status of ECK Chair &amp; Commissioners</td>
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<td>Consider expressing donor support for renewal of the Chair’s tenure to avoid gaps and confusion that may occur if he is removed so close to elections. (Start dialogue on this immediately)</td>
<td>Accommodate international observers.</td>
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## ADDITIONAL ISSUES

### ELECTION ADMINISTRATION

<p>| Electoral Commission of Kenya | Provide TOT for election personnel at the local level to increase awareness of election-related issues and regulations, and to develop | Support efforts that clearly define the roles of commissioners and the roles and responsibilities of the Secretariat. This may require revisions in | Support training activities that would help to institutionalize human resource plan reforms implemented through the |</p>
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<td>a pool of trainers within the institution (Start immediately and continue as necessary).</td>
<td>legislation.</td>
<td>Strategic Plan.</td>
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<td>Support ECK efforts to identify what activities or work it could outsource. <strong>Immediately and continue as necessary).</strong></td>
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<td>Offer senior staff of the Commission courses on electoral processes.</td>
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<td></td>
<td>Establish office of donor coordination assigned to the ECK and funded by the donors. (July 2006)</td>
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<td>Improve effectiveness of field officers with provision of cars.</td>
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<td></td>
<td>Provide constituency offices with computers and networking the computers to improve registration and the processing of election results. <strong>(Immediate and continuous)</strong></td>
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<td>Inspection of Voter Register</td>
<td>Support training for registration officials on the significance of the voters’ register and the importance of accuracy of records. <strong>(Immediate and continuous)</strong></td>
<td>Sensitize voters on the significance of inspecting the voters’ register. This can be done through voter and civic education.</td>
<td>Support ECK in developing standard guidelines on cleaning, updating, validation, and maintenance of the voters’ register.</td>
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<td>Support publicity campaign for the voter inspection exercise. <strong>(Immediate and continuous)</strong></td>
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<td>Introduce innovative methods of making registration exercise more accessible to the voter (e.g., via electronic voter inspection system).</td>
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<td>YOUTH</td>
<td>Support initiatives to increase youth registration. (See “Voter Registration” section). <strong>(Immediate and continuous)</strong></td>
<td>Support civic/elections education in party youth leagues.</td>
<td>If party/parliamentary training is supported, include focus on the role of younger party members and MPs.</td>
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<td>Support initiatives to foster increased participation by young professionals, in the political system, including leadership fora and trust fund. <strong>(Start the process immediately)</strong></td>
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<td>WOMEN and the POLITICAL PROCESS</td>
<td>Support a Trust Fund for women. <strong>(Start the process immediately)</strong></td>
<td>Support a media initiative to increase the profile of female office holders from the local to the national level.</td>
<td>Foster women’s leadership in the political process at the local level.</td>
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<td></td>
<td>Support passage of the Political Party Bill with relevant gender-sensitive section intact. <strong>(begin the dialogue on this immediately)</strong></td>
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<td>Provide consistent capacity development support and mentoring to female office holders from the local to the parliamentary level.</td>
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<td>Mentor political aspirants, from the local to the national level, through partnerships with present and past female office holders, and through technical assistance, including training on dealing with the media. <em>(Immediate and continuous)</em></td>
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<td>Provide capacity development for active female members of political parties to enable them to expand political space for women in the parties.</td>
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<td>Gender and Governance Program: Strengthen program administration and technical capacity. <em>(Begin immediately)</em></td>
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<td>Mentor young women to increase the pool of potential female candidates.</td>
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<td>Civic education</td>
<td>Fast track NCEPIL and prioritize election scenario issues, e.g. peace/reconciliation/nationhood. <em>(July 2006)</em></td>
<td>Include meaningful civic/voter education in school curricula.</td>
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<td>Civil Society</td>
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<td>Piggyback voter education on other civic education programs.</td>
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<td>Expand the use media in civic education programs.</td>
<td>Provide capacity support for civil society organizations in order to develop a wider cadre of objective and effective institutions perceived that could thus play a role in election-related and other governance activities.</td>
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APPENDIX A: INTERVIEWS

Anita Kaushal, Programme Officer (Governance) -- Department for International Development (DFID)/Kenya

Antony Njui, National Executive Secretary -- Catholic Justice and Peace Commission (CJPC)

Bjarte Tora, Country Director -- National Democratic Institute (NDI)/Kenya

Bradley Austin, International Foundation for Elections Systems (IFES)

Brian Kelly, European Union

Chris Hannemeyer, Director of Programs for Africa, MENA and the Americas -- IFES/Washington, DC

Danny Irungu, Program Officer, East Africa -- International Republican Institute (IRI)/Kenya

Deborah Okumu, Executive Director -- Kenya Women’s Political Caucus (KWPC)

Dr. Karutti Kanyinga -- University of Nairobi (UON); South Consulting
  Edward Cherono, Convener, Registration/Elections/Demarcation

Election Commission of Kenya: Samuel Kivuitu, Chairman

Esther Kamweru, Executive Director -- Media Council of Kenya

Felix Owuor, Senior Program Manager -- National Democratic Institute (NDI)/Kenya

Francis Ang’ila, Projects and Allied Consultants

Fredrick Masime, Executive Director -- Centre For Governance and Development (CGD)
  Gabriel Mukele, Vice Chairman, Convener, General Purposes/Electoral Reform

Gakii Kiogora, Project Coordinator -- Action Aid

Gichira Kibaara, Director Legal Affairs -- Ministry of Justice and Constitutional Affairs

Habel Nyamu, Convener, Human Resources, Electoral Commission of Kenya (ECK)

Haroun Ndubi, Executive Director -- Kituo Cha Sheria

Hilde Klemetsdal, Second Secretary -- Royal Norwegian Embassy

Honorable Omingo Magara, Member of Parliament -- Ford People

Honorable Ruth Oniango, Member of Parliament -- Kenya African National Union (KANU)

Honorable William Ruto, Member of Parliament -- Kenya African National Union (KANU)
Irene Oloo, Executive Director -- League of Kenya Women Voters (LKWV)
Jack Tumwa, Convener, Voter Education/Public Relations, Electoral Commission of Kenya (ECK)
Jacques Carstens, Head of Governance Justice Law and Order Sector (GJLOS) - Ministry of Justice and Constitutional Affairs
Jane Onyango, Executive Director -- Federation of Women Lawyers –Kenya (FIDA)
Joel Tsola, Secretary, Electoral Commission of Kenya (ECK)
John Fox, Managing Director -- IntermediaNCG
Juliana Omale, Editorial Director -- African Woman and Child Feature Services (AWC)
Justina Kivindu, IT Manager, Electoral Commission of Kenya (ECK)
Karl Wesselink, Program Coordinator -- European Union – Democratic Governance Support Programme (EU-DGSP)
Kepta Ombati, Executive Director -- Youth Agenda
Lisa Peterson, Political Officer – Embassy of the United States of America/Kenya
Maina Kiai, Chairman, Kenya National Commission on Human Rights
Martin Oloo, Governance Advisor -- DFID/Kenya
Mira Gupta, Program Assistant, East Africa and Southern Africa -- IFES/Washington, DC
Monica Obel, Human Resources Manager, Electoral Commission of Kenya (ECK)
Moses A. Owuor, Program Officer -- International Foundation for Election Systems/Kenya
Mugambi Kiai, Senior Project Officer, Democratic Governance Project -- Canadian International Development Agency (CIDA)/Kenya
Munir Mazrui, Chairman Coast Province -- Supreme Council of Kenyan Muslims (SUPKEM)
Mwalimu Mati, Executive Director -- Transparency International (TI)
Nancy Gitau, Project Manager, Democracy & Governance -- United States Agency for International Development (USAID)/Kenya
Otieno Okero, Programs Co-coordinator -- Institute for Education in Democracy (IED)
Patrick Onyango, Executive Director -- Citizens Coalition for Constitutional Change (4Cs Trust)
Paul E. Fagan, Deputy Director, Africa - International Republican Institute (IRI)/Washington, DC
Per Brixen, Programme Officer -- United Nations Development Program (UNDP)/ Kenya
Peter Alingo, Program Officer -- Institute for Education in Democracy (IED)
Peter Mackenzie, Resident Director, East Africa Office -- International Republican Institute (IRI)/Kenya
Peter Mwangi, Programme Coordinator -- Citizen’s Coalition for Constitutional Change
Professor Larry Gumbe, Chairman, Liberal Democratic Party (LDP)
Richard Cox, Second Secretary, Political/(Economic) -- British High Commission
Rita Mwera, District Elections Coordinator, Electoral Commission of Kenya (ECK)
Rosemary Okello, Executive Director -- African Woman and Child Feature Services (AWC)
Sheryl Stumbras, Senior Democracy & Governance Advisor -- United States Agency for International Development (USAID)/Kenya
Siobhan Guiney, Resident Program Officer -- International Republican Institute (IRI)/Kenya
Sue Lane -- DFID/Kenya
Suleiman Chege, Deputy Secretary, Electoral Commission of Kenya (ECK)
Theophane Noel, Project Manager -- IFES/Kenya
Tom Kagwe, Research/Consultant -- Catholic Justice and Peace Commission (CJPC)
Wacheke Wachira, Program Officer -- European Union – Democratic Governance Support Programme (EU-DGSP)
APPENDIX B: SELECTED BIBLIOGRAPHY


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Political Parties Bill 2005 (Draft 5)

APPENDIX C: STATEMENT OF WORK
STATEMENT OF WORK
FOR
AN ASSESSMENT OF THE PRE-ELECTORAL ENVIRONMENT,
AN EVALUATION OF SUPPORT TO THE ELECTORAL COMMISSION, AND
RECOMMENDATIONS FOR SUPPORTING THE 2007 ELECTIONS

I. PURPOSE

The purpose of this scope of work is to define the tasks for a contractor to carry out an assessment of the pre-electoral enabling environment in Kenya, to conduct an evaluation of development partner support to the Electoral Commission of Kenya from 2001 to the present, and to identify potential areas for development and diplomatic assistance.

II. BACKGROUND

Overview of 2002 Kenyan electoral environment

Kenya’s 2002 electoral experience was the third multi-party election in the current era of transition to a more democratic, open political system. Kenya’s political future was at stake in the elections, and the high stakes increased the dangers of pre-election violence and extra-constitutional, anti-democratic actions, including speculation that the ruling party might find a way to delay the elections or change the constitution to maintain President Moi’s tenure in office. Kenya has a history of serious pre-election violence, much of it carried out on the basis of ethnicity and feeding off the country’s deeply entrenched land problems. Gender-based violence is also pronounced during elections as a form of intimidation for female aspirants. These dangers were further exacerbated by a stagnant economy, a potentially contentious constitutional reform process, a government monopoly over radio, gaps in electoral laws, conscious exclusion of women from the political arena, and weak democratic institutions generally. In addition, the Electoral Commission of Kenya (ECK) only a year before the elections was widely perceived as lacking credibility and any independence from the Executive branch of government. This fluid situation was a genuine danger to the stability of Kenya. The international community’s challenge was to support peaceful democratic transition in the country.

Summary of development and diplomatic assistance to promote the democratic transition in 2002

Donors provided significantly more assistance in the run up to the 2002 elections than they had in 1997 or 1992. Assistance generally fell into the following six areas.

Election-related intimidation and violence: Monitoring and forestalling political violence was fundamental to USAID’s elections program. To this end, the USAID awarded six grants to well-known local organizations that together designed and operated a Central Depository Unit (CDU) on political violence. The six organizations were chosen to reflect both geographical and program diversity: the National Council of Churches of Kenya (9 regional offices across the country); the League of Kenya Women Voters; The Centre for Governance and Development; Tawanzal Foundation (based at the Coast province); the Kenya Human Rights Commission; and the Foundation For Dialogue (based in the Rift Valley Province). These organizations also provided monitors in areas prone to electoral violence, who in turn submitted incidence reports to the CDU. Once analyzed, this information, while available to the general public, was specifically...
directed to the Electoral Commission of Kenya (ECK), the media, members of parliament, and law enforcement agencies.

The Royal Netherlands Embassy (RNE), the UK’s Department for International Development (DFID), and the Canadian International Development Agency (CIDA) complemented this effort by supporting an ECK-led anti-violence multi-media campaign. State of the art commercials, billboards, and print ads highlighted the need for peaceful elections and objective voting for qualified candidates.

Electoral Administration: Strengthening the ECK’s capacity to effectively administer elections was the largest single component of USAID electoral support. The International Foundation of Election Systems (IFES) began implementing this program in March 2001. One significant element was the design and provision of a communication system to enhance the ECK’s ability to ensure public security and provide secure transit of ballots and electoral results. The UNDP, through its principal NGO partner the Institute for Education in Democracy (IED), also supported training for ECK officials.

Domestic Monitoring: DFID led a multi-donor funded domestic monitoring program – the Kenyan Domestic Observation Program (K-DOP). K-DOP trained and deployed 420 observers to all parliamentary constituencies in the pre- and post-electoral periods. On polling day, 15,000 poll watchers were deployed. K-DOP also included a component to monitor television, radio, and print media coverage during the pre-electoral and elections periods as well as a small component to monitor campaign financing. The UNDP also recruited, trained, and deployed an additional 178 National UN Volunteer Field Workers to monitor civic preparedness and to observe the pre- and post-elections periods.

International Observation: Diplomatic observer missions consisted of both visiting delegations and missions already on the ground. The European Union (EU) sponsored the largest international delegation. A smaller delegation from the Carter Center complemented the EU delegation. Diplomatic missions also fielded substantial numbers of observers. The USG alone deployed approximately 100 diplomatic observers. To assist in the overall coordination of diplomatic observers, the RNE established a Donor Information Center (K-DICE).

Viewed more broadly, there was actually significant international monitoring of events well before the actual election via the Democratic Development Group (DDG) and the Like Minded Donors-Technical (LiMiD-T) group. The DDG was a group of 25 bilateral missions and the EU. As the election grew closer, joint LiMiD-T/DDG working groups were formed on media, electoral administration, violence, and freedom of assembly. These working groups then provided briefings on key electoral issues to the Heads of Missions (HOMs). As a result of the briefings, numerous activities were initiated; groups of four to six HOMs held meetings with key officials highlighting election concerns; joint HOMs press conferences were held; embassies undertook individual lobbying attempts and issued joint demarches; small groups of HOMs visited every province to reiterate that the diplomatic community was closely monitoring issues such as violence and freedom of assembly; and the HOMs raised key electoral concerns at all meetings with high level GOK and opposition officials, regardless of the meeting agenda.

Political Party Capacity Building: The Engendering Political Process: Program (EPP), a multi-donor basket funded program, also provided critical support. This comprehensive program addressed the range of issues and barriers women face in running for political office. EPP worked with 60 female aspirants, representing 60 different constituencies, varying for parliamentary seats in the 2002 elections. More than 100 women seeking civic seats also
participated in the program. The programme also addressed campaign violence where incidences of violence were reported and documented. The National Democratic Institute for International Affairs (NDI), with USAID/Washington funding, assisted Kenyans to develop and strengthen political party institutions. NDI's program enabled parties to participate more effectively in the political process and to respond to the interests of all Kenyans in a professional, transparent, accountable, and peaceful manner. The Agency for Development Education and Communication (ADEC) complemented NDI's program by training political party agents nationwide to serve as party poll watchers during the elections period.

An Informed Citizenry: The Kenya National Civic Education Programme (NCEP) promoted democratic values, awareness, and engagement in the constitutional review process among ordinary Kenyan citizens. The NCEP was a coordinated effort by four consortia of Kenyan Civil Society Organizations (CSOs) to "equip citizens with relevant knowledge to contribute to and participate actively and meaningfully in the [country's] socio-economic, political, and development process." Beginning in late 2001, the member organizations of the NCEP conducted workshops, community forums, theater and drama presentations, and other public events throughout Kenya as means of raising democratic awareness, promoting democratic values, and engaging citizens in the ongoing review of the Kenyan constitution. The Program was completed before the Kenyan national elections that took place on December 27, 2002. The Institute for Education in Democracy (IED), Muslim Civic Education Trust (MCET) and the Presbyterian Church of East Africa (PCEA) implemented a USAID-funded program utilizing radio, television, and print media to provide fora for political parties to communicate their platforms to the voting public and for debates on electoral issues. In addition, the International Republican Institute (IRI) had a grant under which it conducted a campaign to promote voter registration. Activities under this grant focused on strengthening public opinion polling in Kenya, including presidential preference polls.

Outcome of 2002 elections and future challenges

A critical milestone was achieved with the constitutionally mandated departure from office of President Daniel Arap Moi, who had maintained the presidency for 24 years. Overall, the 2002 election proved to be a significant departure from the previous elections that had been fraught with allegations of manipulation and rigging, as well as with faulty administration in the conduct of the polling. Compared to the multi-party elections of 1992 and 1997, the 2002 elections also proceeded with vastly reduced levels of intimidation and violence. In general, the electoral environment within which the poll was conducted and the manner in which it was administered facilitated the effective expression of the Kenyan electorate in demanding reform and ushered in a new era of democratic change.

Domestic, diplomatic, and international observer missions unanimously noted the 2002 elections as a remarkable step forward for Kenya, citing this process as an example deserving of worldwide attention. K-DOP was lauded for its extensive coverage and indefatigable commitment to ensuring a free and fair electoral process. Throughout the preparatory period culminating in the election day, the EC reached agreement to have matured considerably and to a large extent allayed the fears expressed in previous elections that its capacity to administer elections fairly and independently was lacking or severely compromised.

Nevertheless, while the 2002 elections presented a significant improvement over previous elections, observers agreed that organizational shortcomings persist in the administration of elections in Kenya. Of note was the absence of legitimatley registered voters' names on the registers and the indiscriminate application of the newly enacted voter assistance regulation.
intended to enhance the secrecy of ballots. The conduct of the nominations process also received substantial criticism by domestic and international observers alike who cited unequal coverage of parties by the government media operating through the Kenya Broadcasting Corporation (KBC), which skewed reporting towards KANU.

The next general elections are expected to take place at the end of 2007. Issues of ongoing concern include party nomination processes, electoral redistricting and the potential creation of additional constituencies, the present capacity of the ECK, the potential consequences of restructuring the number and role of ECK commissioners and other associated changes as indicated in the new proposed Constitution, the role of the incumbent government leading up to the elections, political party financing, voter turn-out, marginalization of women, and the potential for intimidation and violence surrounding the elections.

While it is neither within the manageable interest of the international community to address all the factors affecting the quality of elections in Kenya nor is it appropriate for the international community to play a role in all matters, there are elements of the electoral process that development and diplomatic assistance could positively influence. To that end, it is important that electoral support be initiated well in advance of election day. Therefore, USAID would like to complete this assessment as soon as possible in order to allow sufficient time to address the issues identified therein.

Objective

The objective of this contract is to provide the development and diplomatic community with a thorough assessment of the pre-electoral environment in Kenya including: 1) an identification of the critical issues that will affect the extent to which the elections are free, fair, and credible; 2) an evaluation of the assistance that has been provided to the ECK since 2001; and 3) recommendations for donor interventions to promote an improved electoral process.

This assessment will be used to:

- provide various stakeholders with accurate information regarding the pre-electoral environment;
- inform the international community and local partners of the successes and shortcomings of the support already provided to the ECK;
- promote informed dialogue among the international community and local partners regarding their electoral strategies;
- map the way forward for timely engagement by development and diplomatic partners in the 2007 electoral process;
- identify best practices for development partners and diplomatic missions to work together; and
- help development and diplomatic partners to develop their own strategies for electoral support.

III. Tasks

Specifically, the contractor shall carry out an assessment of the pre-electoral environment in Kenya, which at a minimum shall include the review and analysis of the following elements:
- laws regulating the various elements of the electoral process including the electoral commission, political parties, the media coverage, freedom of speech, access to information, as well as how these law are implemented;
- voter registration system;
- candidate party nomination process;
- demarcation of constituency boundaries and the legal procedures for redefining constituencies;
- regulations for campaigns;
- current proposals for electoral law reforms, including the political parties financing bill;
- new provisions for electoral processes that would result from the passage of the new proposed Constitution;
- framework for handling disputes before, during, and after the elections;
- donor-supported assistance already provided to the ECK;
- current capacity of the ECK and its staff as well as their preparedness for managing the elections;
- capacity for domestic monitoring, including the ability to conduct a parallel vote tabulation;
- potential for voter intimidation and electoral violence;
- role of the media generally and the rules for safeguarding fair and impartial coverage by the state-owned Kenya Broadcasting Company;
- public access to information on the elections and electoral issues, including civic and voter education;
- the role of women and potential barriers that hinder participation in the electoral process both as voters and candidates;
- role of political parties, including codes of conduct for candidates and parties and the capacity for poll watching and parallel vote tabulation by political parties, and procedures and capacity for investigating and adjudicating electoral fraud, campaign violations, etc...

The contractor should also evaluate all development partner assistance provided to the ECK since 2001. In particular, the contractor should assess whether the USAID support via IFES assisted the ECK in achieving the results of improved electoral administration and improved electoral enabling environment. In assessing whether these results were achieved the contractor should review the effectiveness of the specific activities IFES has undertaken and make recommendations regarding what has been effective and what has not been effective. If the contractor finds that continuing support to the ECK is a priority, then specific recommendations on how future assistance could be more effective should be included. (The IFES SOW will be provided after signature of award).

Based on this analysis of the electoral environment and the evaluation of support to the ECK, the contractor will identify the issues that will have the greatest impact on the 2007 elections and that are central to the development of a more credible electoral process in Kenya. The contractor shall

1 Although numerous aspects of the 2002 elections were evaluated shortly following the elections, the USAID support to strengthen the ECK's capacity to administer elections was not independently evaluated. Thus, the contractor should evaluate all ECK assistance to date. However, for evaluations of other major program components the contractor is referred to the K-DOP evaluation, the NCEP evaluation, the EPP evaluation, and the ECK media program evaluations. Copies of these evaluations and the IFES Scope of Work will be provided to the assessment team.
articulate the most critical actions and reforms that must take place to address those issues. The contractor should also make specific recommendations on the best modalities to implement the program and to coordinate development and diplomatic assistance. These recommendations should be prioritized, giving consideration to the following:

- Kenyan leadership and ownership is tantamount to improvements in electoral processes;
- in the past international partners have been accused of forcing Kenyan NGOs to work together to undertake domestic monitoring efforts;
- development and diplomatic partners have been criticized for failing to design programs early enough in the electoral process;
- there may not be an appropriate role for development and diplomatic partners with regard to every critical issue – there may be critical issues that do not require programmatic interventions, but rather dialogue and policy discussions;
- the success of many elements may depend upon appropriate sequencing of inter-related elements;
- some elements of the electoral process are more susceptible to fraud than others and therefore they should be more closely monitored; and
- donors have limited resources and may not be able to support all potentially recommended interventions.

IV. Deliverables

No later than 15 calendar days after the task order is signed, the contractor shall provide USAID/Kenya with a workplan for how the assessment will be conducted including a description of the methodology for data collection. USAID, in collaboration with the LiMiD-T electoral process sub-group, will review that methodology and provide feedback within 7 calendar days. The contractor shall then make any necessary revisions within 7 calendar days.

No later than January 23rd the contractor shall have an assessment team in the field conducting the research. Upon arrival, the contractor shall conduct an in-briefing with the USG mission, other development partners, as well as with local Kenyan partners. Approximately half-way through the assessment fieldwork, the contractor will provide the LiMiD-T electoral process sub-group with a briefing. Finally, upon completion of the assessment fieldwork, the contractor shall conduct an out-briefing and dissemination workshop with all development and diplomatic partners. USAID will provide the contractor with a list of participants. The dissemination workshop should be held in Nairobi.

No later than March 6th, the contractor shall provide USAID a draft assessment report. The report shall include:

- a discussion of the issues that will have the greatest impact on the 2007 elections including a list of potential “hot spots” related to electoral violence (if that is found to be of significant concern);
- an evaluation of ECK assistance to date;
- a prioritized list of recommendations for potential donor and diplomatic interventions to support the preparations, conduct, and monitoring of the 2007 elections;
- recommendations regarding mechanisms for program implementation and coordination based upon the prioritized list from above; and
- a timetable outlining the phasing for potential donor actions.
USAID will provide the contractor with comments of the LiMiD-T electoral process subgroup and the USG mission within 21 days of receipt of the report. The contractor shall then make the necessary revisions within 14 days of receipt of these comments and present USAID with 5 bound copies of the final draft as well as an electronic version.

V. Payment

The contractor should propose a payment schedule based on deliverables outlined in the Statement of Work.

VI. Special Instructions

The contractor will work under the direction of the DG Office chief with ultimate responsibility to the Mission Director.

VII. Duty Station

The duty station is Nairobi, Kenya. A six-day work-week is authorized without premium pay.

VIII. Work Week

A six-day work-week is authorized without premium pay.

X. Logistics

The contractor will be responsible for all logistics. The use of USAID staff, office space, materials, and vehicles is not authorized.

IX. Level of Effort and Period of Performance

The scope of work calls for the services of three qualified individuals each for 30 days commencing c/o January 15, 2006 and ending c/o April 15, 2006. The contractor shall determine the appropriate number of days that each team member will devote to preparations, fieldwork, analysis, writing, and revision.

XI. Selection Criteria

The criteria for selection of the Task Order are based on the following:

1. Key Personnel: 30 points

At a minimum, one team member must be a Kenyan residing in Kenya.

- The Team Leader should possess the following skills: (15 points)
  o At least a graduate degree in Political Science, Public Administration, or other related social science; and
  o Ten years of professional experience in conducting pre-electoral assessments, designing electoral strategies, and/or implementing electoral-related programs; and
  o Extensive knowledge of electoral issues (e.g., elections administration, electoral monitoring, the role of media, political parties and civil society, comparative
electoral law, etc...) in developing countries, especially in Africa, and preferably in Kenya.

- The Other Team Members should possess a combination of the following skills and experience: (15 points)
  - A senior level expert in electoral processes, with both practical experience and academic grounding in Africa, preferably in Kenya; and
  - An evaluator with knowledge of Kenyan political development, Kenyan democratic gender issues, Kenyan elections, the Electoral Commission of Kenya, and previous assessment experience.

2. Proposed Approach: 20 points
   - Understanding of the statement of work (10 points)
   - Extent to which proposed approach is feasible, strategic, and supportive of stated objectives (10 points)

3. Gender Considerations: 10 points
   - Extent to which gender issues are meaningfully identified and addressed as appropriate.

4. Past Performance: 30 points
   - Demonstrated success in providing similar services on past contracts and/or assistance instruments in the region (10 points)
   - Timeliness of performance and adherence to contract schedules (10 points)
   - Previous customers' satisfaction (10 points)

5. Cost: 10 points
   - Cost Reasonableness & Realism
## CONTRACTOR EMPLOYEE BIOGRAPHICAL DATA SHEET

### 1. Name (Last, First, Middle)  
2. Contractor's Name

### 3. Employee’s Address (include ZIP code)  
4. Contract Number  
5. Position Under Contract

### 6. Proposed Salary  
7. Duration of Assignment

### 8. Telephone Number (include area code)  
9. Place of Birth  
10. Citizenship (if non-U.S. citizen give visa status)

### 1. Names, Ages, and Relationship of Dependents to Accompany Individual to Country of Assignment

### 12. EDUCATION (include all college or university degrees)  
13. LANGUAGE PROFICIENCY

<table>
<thead>
<tr>
<th>NAME AND LOCATION OF INSTITUTION</th>
<th>MAJOR</th>
<th>DEGREE</th>
<th>DATE</th>
<th>LANGUAGE</th>
<th>Proficiency Speaking</th>
<th>Proficiency Reading</th>
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### 14. EMPLOYMENT HISTORY

1. Give facts three (3) years. List salaries separate for each year. Continue on separate sheet of paper if required to list all employment related to duties of program assignment.
2. Salary definition—basic periodic payment for services rendered. Exclude bonuses, profit-sharing arrangements, commissions, consultant fees, extra or overtime pay, or cost of living or dependent education allowances.

<table>
<thead>
<tr>
<th>POSITION TITLE</th>
<th>EMPLOYER'S NAME AND ADDRESS</th>
<th>POINT OF CONTACT &amp; TELEPHONE #</th>
<th>Dates of Employment (mm/dd/yyyy)</th>
<th>Annual Salary From</th>
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### 15. SPECIFIC CONSULTANT SERVICES (give last three (3) years)

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<th>SERVICES PERFORMED</th>
<th>EMPLOYER'S NAME AND ADDRESS</th>
<th>POINT OF CONTACT &amp; TELEPHONE #</th>
<th>Dates of Employment (mm/dd/yyyy)</th>
<th>Days at Rate From</th>
<th>To</th>
<th>Daily Rate In Dollars</th>
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### 16. CERTIFICATION:  
To the best of my knowledge, the above facts as stated are true and correct.

Signature of Employee  
Date

Contractor certifies in submitting this form that it has taken reasonable steps (in accordance with sound business practices) to verify the information contained in this form. Contractor understands that USAID may rely on the accuracy of such information in negotiating and reviewing persons under this contract. The making of certifications that are false, fictitious, or fraudulent, or that are based on inadequately verified information, may result in appropriate remedial action by USAID, taking into consideration all of the pertinent facts and circumstances, ranging from refund claims to criminal prosecution.

Signature of Contractor’s Representative  
Date

AID 1420-17 (4/95)
INSTRUCTIONS

Indicate your language proficiency in block 13 using the following numeric interagency Language Roundtable levels (Foreign Service Institute levels). Also, the following provides brief descriptions of proficiency levels 2, 3, 4, and 5. "S" indicates speaking ability and "R" indicates reading ability. For more in-depth description of the levels refer to USAID Handbook 28.

2. Limited working proficiency
   S  Able to satisfy routine social demands and limited work requirements.
   R  Sufficient comprehension to read simple, authentic written material in a form equivalent to casual printing or typescript on familiar subjects.

3. General professional proficiency
   S  Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations.
   R  Able to read within a normal range of speed and with almost complete comprehension.

4. Advanced professional proficiency
   S  Able to use the language fluently and accurately on all levels.
   R  Nearly native ability to read and understand extremely difficult or abstract prose, colloquialisms and slang.

5. Functional native proficiency
   S  Speaking proficiency is functionally equivalent to that of a highly articulate well-educated native speaker.
   R  Reading proficiency is functionally equivalent to that of the well-educated native reader.

PAPERWORK REDUCTION ACT INFORMATION

The information requested by this form is necessary for prudent management and administration of public funds under USAID contracts. The information helps USAID estimate overseas logistic support and allowances; the educational information provides an indication of qualifications; the salary information is used as a means of cost monitoring and to help determine reasonableness of proposed salary.

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

United States Agency for International Development
Procurement Policy Division (M/OP/P)
Washington, DC 20523-1435;
and
Office of Management and Budget
Paperwork Reduction Project (0412-0520)
Washington, DC 20503

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ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

1. (a) The contractor represents, to the best of its knowledge and belief, that the award to it of a delivery order or the modification of an existing delivery order does [ ] or does not [ ] involve an organizational conflict of interest.

   (b) the term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interest which (A) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or, (B) may result in an unfair competitive advantage. It does not include the normal flow of benefits from the performance of a contract.

   (c) The term "Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FAR 19.101.

2. If the contractor indicates that there are organizational conflicts of interest in the "Organizational Conflicts of Interest Representation", the contractor shall provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed in the proposed delivery order and bearing on whether the contractor has a possible organizational conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. The contractor may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would eliminate or neutralize such organizational conflict.

Name of Contractor

BY:

Signature

NAME:

Typed or Printed Name of Authorized Official

DATE: