

AfriCOG/KPTJ Election Series

# Voter Registration

for the 2013 General Elections in Kenya





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## List of Acronyms

AfriCOG	Africa Centre for Open Governance
BVR	Biometric Voter Registration
CORD	The Coalition for Reform and Democracy
ECK	Electoral Commission of Kenya
ELOG	The Election Observation Group
EVID	Electronic Voter Identification
IEBC	Independent Electoral and Boundaries Commission
IPRS	Integrated Population Registration Systems
IREC	The Independent Review Commission, also known as the Kriegler Commission
KNDR	Kenya National Dialogue and Reconciliation
MARS Group	The Media Analysis and Research Group Kenya
OMR	Optical Mark Reader
PS	Polling Station
RO	Returning Officer
TNA	The National Alliance

## Foreword

On March 4, 2013, Kenya held a landmark general election. It was the first national election since the promulgation of the internationally lauded constitution, which created a devolved system of government. For the first time, Kenyans voted simultaneously for six elective offices, ranging from president to local ward representative. This election was also the first to be administered by the newly created Independent Elections and Boundaries Commission (IEBC), a body which enjoyed over 90 per cent public confidence in the lead-up to the national polls.<sup>1</sup>

In an attempt to rid Kenyan elections of the stigma they incurred after the 2007 debacle, the IEBC announced its decision to integrate digital technology into voter registration, election day voter identification and results transmission. In this way, the IEBC hoped to strengthen public confidence – both domestically and internationally – in the transparency and verifiability of the electoral process.

In particular, the biometric voter registration (BVR) technology was meant to provide a reliable and verifiable list of registered voters in Kenya. This was to be an overhaul of the previous optical scanning voter registration system, which had produced a bloated and much-condemned voter register in previous elections. Despite a series of delays in the procurement of the BVR technology, the IEBC did ultimately manage to conduct digital voter registration from November to December 2012. However, the utility of the digital list of voters was relatively limited without the electronic voter identification (EVID) kits, which were to identify registered voters on election day and then mark those voters as having voted. This technology was intended to prevent multiple voting and voting by non-registered Kenyans. Unfortunately, the EVID kits failed across the country, forcing the IEBC to resort to using the hard copy of the register.

In this report, the Africa Centre for Open Governance (AfriCOG) presents its findings related to the voter register and the failure of the EVID technology. Specifically, this report details the inconsistencies contained within the multiple voter registers, the failure of the IEBC to adequately explain the differing totals of the various registers and the implications of the lack of a single, verifiable register.

In line with its commitment to promote permanent public vigilance over public life and public institutions, AfriCOG provides a detailed account of changes made to the register after the close of registration, the lack of consistency in the published totals and the unexplained instances of turnout of over 100 per cent.

Overall, AfriCOG finds that one year after the election, Kenyans still do not know how many registered voters there are in the country. This problem is compounded by the 2013 Supreme Court petition judgment, which effectively legitimizes the use of multiple registers, thereby opening the door to error and malpractice.

In conclusion, AfriCOG recommends a series of reforms to ensure the transparent creation of a credible voter register for future elections.

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1 Kenya National Dialogue and Reconciliation (KNDR). February 2013, vii. Accessible at [http://www.dialoguekenya.org/Monitoring/\(February%202013\)%204TH%20Review%20Report%20on%20Electoral%20Preparedness.pdf](http://www.dialoguekenya.org/Monitoring/(February%202013)%204TH%20Review%20Report%20on%20Electoral%20Preparedness.pdf).

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## Introduction

As the bedrock of a free and fair election, the voters' register is a crucial element of any electoral process. At the most basic level, the register protects the sanctity of the vote, ensuring and enforcing the "one person, one vote" principle. The register is the realisation of every adult Kenyan citizen's constitutionally enshrined right to be registered as a voter. A legally verified and finalised list of eligible voters is vital, because it provides a check on fraud. The register also allows for analysis of voter turnout and voting patterns. It helps society understand its own political behaviour, track trends over time and space, and plan for the future.

Here, we examine reforms leading up to the voter registration process of 2012 and assess the integrity of the voter registration process itself.

## Technology and Voter Registration in the Lead-up to the 2013 General Elections

When Kenyans began to prepare for the 2013 General Elections, there was little doubt that the voter registration process was in need of significant reform. The Independent Review Commission (IREC or the Kriegler Commission) commented on the deplorable state of the 2007 register in its final report.

The Commission summarised problems with the register as follows:

The voter register, which has been updated from time to time since 1997, is materially defective in three respects that in themselves already impair the integrity of the election results: (i) Registered voters represent only 71% of the voting age population of Kenya.<sup>2</sup> (ii) The register probably includes the names of some 1.2 million deceased persons. (iii) Women and voters between 18 and 30 years of age are significantly under-registered. Furthermore, members of certain marginalised communities encounter difficulties in obtaining their national identity cards, a prerequisite for registration as a voter.<sup>3</sup>

The Commission went on to detail the failure of the Electoral Commission of Kenya (ECK) to maintain the integrity of the register.

The deletion of names of deceased voters from the register is ineffective: the Central Bureau of Statistics estimates that 1,733,000 persons have died since 1997 but the ECK has been able to eliminate the names of only 513,000 deceased persons from the register. Statistically, therefore, the names of some 1.2 million dead persons swell the voter register.<sup>4</sup>

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3 Independent Review Commission (IREC). "Final Consolidated Report." December 27, 2008, p. 8.

4 IREC, p. 79.

Unsurprisingly, the Commission described voter registration in Kenya as “open to serious criticism.” In response, the IEBC integrated technology into its plans for future elections.<sup>5</sup> By 2012, then, there was significant public anticipation around electronic voter registration for the 2013 election, to be done using biometric voter registration (BVR) kits, in preparation for the 2013 General Elections.

In a public statement at the end of October 2012, the IEBC explained that by capturing individual fingerprints and personal biographic information, the BVR kits would “ensure that all those who enrol themselves for the elections are entitled to vote, and to vote only once.”<sup>6</sup> During voter registration, each voter’s information would be automatically transmitted to the IEBC’s central biometric database. “This means a voter register is being created directly with every registration unlike in the traditional Optical Mark Reader (OMR) method which requires scanning of millions of registration forms.”<sup>7</sup> Moreover, the IEBC explained that the BVR kits were equipped with a system for audits, which “can be reviewed independently to establish individual accountability and assist in reconciliation of database records. BVR greatly minimises multiple voter registrations, even though it may not eliminate errors completely.”<sup>8</sup> Technology, the IEBC promised, would address and manage the so-called “pain points” of elections.

Thus, on November 19, 2012, the IEBC commenced voter registration, targeting 18 million Kenyans across

approximately 25,000 registration centres. From 8am to 5pm over a period of 30 days, eligible voters had the opportunity to be electronically registered for the 2013 General Elections. Notably, voter registration had been delayed multiple times, primarily because of problems related to procurement of the BVR kits.

While problems were apparent from the beginning, most were quickly resolved. In some areas, Kenyans were reluctant to register because of rumours that the BVR kits could cause cancer or impotence. In response, the IEBC issued a statement explaining the BVR kits were safe.<sup>9</sup> There was also controversy regarding religious dress, as some Muslim women who veiled their faces were reluctant to remove the veils for voter registration photographs. Finally, there were some cases of faulty BVR kits and at least one stolen BVR kit. In the end, the stolen BVR kit was recovered.<sup>10</sup>

Other problems were more difficult to resolve. For example, there were striking differences in the percentages of eligible voters registered per county, which may have been linked to the fact that BVR kits had to be shared among various polling stations. The IEBC used 15,000 kits for approximately 25,000 centres. In a public statement, the IEBC Chair Ahmed Issack Hassan explained there would be some sharing of BVR kits between centres, especially in rural and sparsely populated areas. In OI Kalou, parliamentarian Erastus Mureithi voiced concern over the inadequate number of BVR kits, urging the IEBC to publicise its plan for sharing the technology.<sup>11</sup> Such details were not provided.

5 Section 44 of the Elections Act stipulates that the IEBC may use technology when appropriate.

6 Hassan, Ahmed Issack. “Biometric Voter Registration (BVR) to Enhance Credibility of Elections.” Available at <<http://www.thepeoplescourt.co.ke/case/statements/97-iebc-statements/155-biometric-voter-registration-bvr-to-enhance-credibility-of-elections>>.

7 *Ibid.*

8 *Ibid.*

9 Mutiga, Murithi. December 16, 2012. “Police won’t access BVR data, says Hassan.” *Daily Nation*. Available at <http://www.nation.co.ke/news/politics/Police+wont+access+BVR+data+says+Hassan/-/1064/1644800/-/4eroyiz/-/index.html>.

10 Standard Digital. November 27, 2012. “IEBC falls behind target for voter registration.” Available at [http://www.standardmedia.co.ke/?articleID=2000071563&story\\_title=iebc-falls-behind-target-for-voter-registration&pageNo=2](http://www.standardmedia.co.ke/?articleID=2000071563&story_title=iebc-falls-behind-target-for-voter-registration&pageNo=2).

11 Munyeki, James and Omoro, James. November 21, 2012. “BVR kits fail to work for second day.” *The Standard*. Available at [http://www.standardmedia.co.ke/?articleID=2000071138&story\\_title=bvr-kits-fail-to-work-for-second-day](http://www.standardmedia.co.ke/?articleID=2000071138&story_title=bvr-kits-fail-to-work-for-second-day).

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It did not help that there were no special provisions to facilitate voter registration in largely pastoralist constituencies. The Election Observation Group (ELOG) noted one important obstacle to voter registration in outlying areas was the vast distance between centres.

Reports from our monitors in Central and South Turkana indicated that vast distances between registration centres which is about 40 km to 80 km apart coupled with the pastoralist way of life contributed to low voter registration rates in these constituencies... The registration period coincided with the season when the pastoralists migrate in search of water and pasture and the migration period takes more than two months. In West Pokot County challenges that were reported included rough terrain and long distances between the registration centres, insecurity whereby communities are hostile to each other and in cases where a registration centre is located in a perceived hostile region then most voters would not go there to register.<sup>12</sup>

While the IEBC used mobile sites to follow pastoralists in the past and the IEBC did go mobile in the last days of the voter registration drive in some areas, it is unclear whether the commission provided mobile centres for pastoralists in 2012.<sup>13</sup>

Also, in some areas, voter registration centres were responsible for many more potential voters than centres in other areas. The distribution of potential

voters per centre ranged from approximately 299 eligible voters per centre (in Tharaka-Nithi) to 9,396 eligible voters per centre (in Nairobi). As a result, there were significant disparities in the percentage of eligible citizens able to register around the country. The IEBC managed to register more than 100 per cent of eligible voters in four out of five counties in the former Central Province, but it registered less than 50 per cent of eligible voters in counties such as Mandera, Turkana, Wajir, Garissa and West Pokot.<sup>14</sup> See the chart on page 5.

While it is difficult to conclusively determine the cumulative effect of such disparities, there is a generally negative relationship between the number of voters per centre and the percentage of eligible voters registered in any given county. That is, in general, a higher percentage of eligible citizens are registered where there are smaller numbers of potential voters assigned to individual registration centres. This is unsurprising, given that staff in crowded registration centres would have struggled to respond to demand and potential voters might also have been less willing to stand in long queues to register.

Finally, voter registration rates were low because of the lack of identity (ID) cards. As became increasingly clear, many eligible voters were unable to register because they had not received their national ID cards. The Elections Act was amended to allow those in possession of an acknowledgement of registration certificate, which indicates that the holder has applied for an ID card, to register to vote. To cast a ballot, however, an actual ID card or passport is required by the law.

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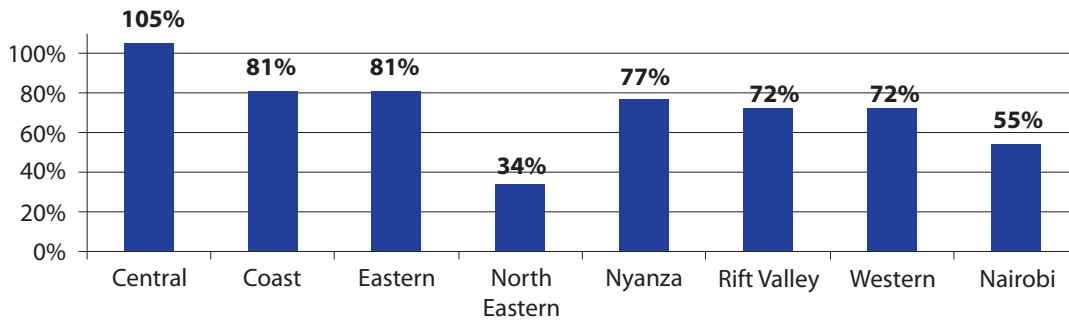
12 Elections Observation Group (ELOG). December 23, 2012. "Statement on Biometric Voter Registration Processes Issued by the Institute for Education in Democracy and the Elections Observation Group." Available at <http://elog.or.ke/index.php/partners/10-ied/69-statement-on-biometric-voter-registration-bvr-processes-issued-by-the-institute-for-education-in-democracy-ied-and-the-elections-observation-group-elog>.

13 <http://www.issafrika.org/pubs/Other/ahsi/HammerstadMono/Chap4.pdf>.

14 See IEBC. "Registered Voters by 16th December 2012." Available at <file:///C:/Users/test/Downloads/REGISTERED%20VOTERS%20BY%2016TH%20DECEMBER%20(1).pdf>.



### Average Per Cent of Voters Registered



The Kriegler Commission had identified this as a problem in 2008. It noted that continuous registration at Electoral Commission of Kenya (ECK) offices accounted for only about three per cent of all registrations. Moreover, the system was “outrageously expensive.”

The cost of the field offices, mostly devoted to voter registration in non-election years, was KSh309 million in 2006 and it is expected to reach KSh377.4 million in 2008. The cost of the 2006 registration drive was KSh412.2 million, the two registration drives in 2007 required KSh2,179 million and the allocation for voter registration for 2007/2008 is KSh596.6 million.<sup>15</sup>

Instead of continuous registration, the Kriegler Commission recommended that voter registration be automated, to occur at the same time as acquisition of a national ID card.

A permanent solution will necessarily involve moving to an alternative system, based on other population databases, particularly that related to the national ID card and, when implemented, to the proposed Integrated Population Registration Systems (IPRS).<sup>16</sup>

To date, this recommendation has not been adopted.

By the end of the process on December 18, 2012, the IEBC had registered 14,340,036 voters, representing approximately 80 per cent of its overall target population.<sup>17</sup>

### The Numbers

As the law requires, the IEBC opened the voters’ register for public inspection and verification on January 14, 2013. Kenyans had the opportunity to verify that their details had been captured correctly, using the IEBC website, via SMS or in person at centres.

15 IREC, p. 78-79.

16 IREC, p. 80.

17 While this was the number published on December 18, 2012 by the IEBC, the Commission later said that it had registered an additional 36,236 voters whose biometric details could not be captured. If true, then the IEBC had actually registered 14,376,272 voters by the end of voter registration.

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Although the original Elections Act stipulated that the IEBC was to gazette the final voter register at least 30 days before the election for public verification, the law was amended to enable the IEBC to publish the gazette notice announcing the compilation of the final register two weeks before the election to accommodate a delayed timeline.

Thus, on February 18, 2013, exactly two weeks before the election, the IEBC published a gazette notice announcing it had completed compilation of the Principal Register. Six days later, detailed statistics related to that voter register were published on the IEBC website. **Notably, this voter register contained 12,500 more voters than the provisional register.** While it is conceivable that names of certain ineligible voters might have been deleted in the process of cleaning up the provisional register, **it is difficult to understand how the voter register could have continued to grow after the legally-stipulated closure of the voter registration period.**

**On March 2, 2013, two days before the election, the IEBC published a previously unmentioned list of voters without biometric information on its website.**

On election day, then, there was the Principal Register of Voters, containing 14,352,545 voters as well as the list of non-biometric voters, containing an additional 36,236 voters.

To compound the problem, **certain political parties revealed that the IEBC had given them yet another version of the voter register to use on election day.** Were political party agents supposed to sign off on election results based on this register or one of the others? Could they make any claim of wrong-doing based on their voter register?

On March 9, 2013, Kenyans listened as the IEBC announced supposed results of the presidential election, complete with a count of registered voters per constituency and per county. **The total number of registered voters was again different from any of the aforementioned totals. The total number of registered voters according to this announcement (14,352,533) is not the sum of all registered voters per county, as recorded in the same announcement. The latter is 14,349,896.**

### *The “Green Book”*

More questions arose in the aftermath of the election, as the voter register became a topic of discussion during the Supreme Court petition hearings. As part of its submissions to the Court, **the IEBC announced that the true and final voter register was not the Principal Register, as provided for in the law, but what was known as the “Green Book”.** The “Green Book,” the IEBC explained, was a hand-written list of registered voters, recorded by IEBC officials at centres during the voter registration process. Despite its alleged supremacy, the “Green Book” was not mentioned prior to the Supreme Court hearing, nor was it provided to the public. Indeed, public verification of the voter register was done using the electronic voter register, not the “Green Book”. **Yet the Supreme Court confirmed the primacy of the “Green Book” in its judgment.**

According to the IEBC, the “Green Book” contains the Principal Register, the Special Register and 12 trainee registrations, which totals 14,388,793 voters. One year after the election, the IEBC has yet to clarify whether this is indeed the number in the “Green Book”. It may well not be. After all, the most recent announcement of the total number of registered voters, issued on July 18, 2013, was 14,388,781.

Notably, the “Green Book,” a collection of hundreds of individual notebooks, filled with hand-written lists of registered voters, is virtually identical to the infamous “Black Book,” castigated by the Kriegler Commission.

The “Black Book,” as it came to be known, was created in 1992, as Kenya prepared for its first multi-party elections. At that time, data related to registrants was recorded at each centre and later mimeographed for use at polling stations. In 1997, the registration system was updated through the use of optical mark recognition forms, but the “Black Books” were kept as back-up. In 2002, the use of “Black Books” was forbidden. In 2007, “Black Books” were also forbidden, but they were ultimately allowed to be kept as back-ups again.<sup>18</sup> In its assessment of the 2007 counting and tallying process, the Kriegler Commission cited the problematic lack of regulations regarding how to deal with voter turnout rates surpassing 100 per cent, and specifically pointed to the use of “Black Books” as reinforcing this problem. In its recommendations, the Commission stated that “Black Books” should be discontinued and their destruction should be “seriously considered.”<sup>19</sup>

The uncertainty around the “Green Book” is especially problematic, because observers of the court-ordered scrutiny of the IEBC’s tallying forms noted disturbing irregularities related to the “Green Book”.

**First, of the 22 polling stations identified by the Supreme Court as requiring a re-tally, there was only one in which the number of registered voters in the “Green Book” was found to equal the number of voters in the Principal Register and in the Special Register. Second, there**

**were no “Green Books” for two out of the 22 polling stations. Third, in one polling station (Mugumoni Primary School), observers noted that voters had been added to the list after it had been officially closed. Fourth, in one polling station (Lomerimeri Nursery School), the “Green Book” had not been officially closed. Fifth, seven “Green Books” had not been closed with an official IEBC stamp and signature. Sixth, there was one polling station in which the total number of voters was unclear, because certain blank fields in the middle of that “Green Book” had not been filled in.**

### *Continuing Unresolved Questions*

Verification of the voters’ register continues to be problematic. On September 4, 2013, the Media Analysis and Research (MARS) Group Kenya released the results of its audit of all Forms 34 posted online by the IEBC. Among problems noted was the lack of a final total of registered voters. **The MARS Group reported discrepancies between the IEBC’s announced totals of registered voters and its own count of registered voters (as recorded on the Forms 34) in all 47 counties.** While many of these discrepancies may have been due to 2,585 missing Forms 34, the two counties that did not have missing forms still had different totals for registered voters than those published by the IEBC. **Moreover, there were 14 counties in which the numbers of registered voters recorded on Forms 34 were larger than the IEBC had announced.** If the missing forms for those counties are ever found, the totals on the forms can only increase those totals, which leaves no chance that those discrepancies can be resolved.

18 IREC, p. 78.

19 IREC, p. 112.

Verification seems all the more critical in light of patterns in the available data. Existing data shows **reported voter turnout rates rise as the number of missing forms per constituency increases.** This correlation requires explanation. Why are high turnout rates associated with areas from which more forms are missing?

### ***Strategic Changes to the Voter Register***

The pattern of the changes appears to have been strategic in nature. **A comparison of the numbers of registered voters per region in December 2012 and February 2013 shows that Jubilee stronghold regions were infused with a total of 68,148 additional voters while the Coalition for Reform and Democracy (CORD) strongholds were stripped of 14,125 voters.**

Region	Changes Between December 2012 and February 2013
Coast	+901
Nyanza	-15,026
Central	+1,848
Rift Valley	+67,000
North Eastern	+6,604
Western	-2,938
Eastern	+4,222
Nairobi	-50,102

A closer look reveals how changes affected counties. The table below illustrates the ten counties that experienced the largest number additions and deletions.

County	Change in Number of Voters
Trans Nzoia	+13,288
West Pokot	+13,092
Turkana	+12,540
Uasin Gishu	+11,913
Narok	+9,652
Nairobi	-50,102
Kajiado	-10,707
Homa Bay	-5,872
Kilifi	-4,816
Murang'a	-4,211

**Overall, the net result of the changes amounts to 48,745 voters added between December 2012, when the voter register was officially closed, and July 2013, when the final results were published.** (See table on page 9.)

### ***Pending Problems and Unresolved Questions***

Clearly, the voter register is rife with problems:

- Despite the fact the voter register was closed to new registrants after December 18, 2012, the Principal Register of Voters contains more voters than the provisional voter register.
- What explains the geographical pattern of changes to the voter register between December and March?
- If the names and other biographical data of voters without biometric information were collected during the registration process, why weren't they also gazetted in the Principal Register?
- If the final, official voter register contains the Principal Register, the list of voters without biometric data and 12 trainee registrations, why don't any of the total numbers of registered voters announced by the IEBC reflect this number?
- Which voter register was actually used in the 2013 General Elections?

### **IEBC Explanations**

In its affidavit to the Supreme Court, the IEBC attempted to explain the first issue. The IEBC stated that some voters had accidentally been assigned to the wrong polling stations. To correct these errors, the IEBC moved voters to their desired polling stations and this “naturally resulted in a variation between the number of registered voters in the provisional register and the Principal Register”.<sup>20</sup> First, transferring voters from one polling station to another might change the number of voters per polling station, but it does not explain the overall increase in the total number of registered voters. Second, changes at the constituency level are as large as 11,000 voters. It is difficult to understand how there could have been that many voters mistakenly assigned to the wrong polling station. Third, even if voters were assigned to the wrong polling stations, it seems unlikely they would have been mistakenly assigned to polling stations outside of their home constituencies. After all, polling stations are all identified by distinct names and numbers. While there are some polling stations in different constituencies with the same name, there are no patterns in the changes which indicate that these were the types of errors that could have been made. Yet there are many such examples. **Between December 2012 and February 2013, 8,516 voters were added to Turkana Central and 11,261 voters were taken away from Turkana West.**

The IEBC also claimed the reason the Principal Register differed so dramatically from the provisional voters’ register was because the former did not include voters from the special register or 12 voters whose names were not originally included because they had

been registered during the voter registration training process. According to this logic, the provisional voter register plus the special voter register plus the 12 trainee registrations should equal the Principal Register. Yet it does not (*see Table below*).

<b>Voter Registration in Kenya</b>	
Provisional Register	14,340,036
Special Register	36,236
Trainee Registrations	12
<b>Total of the Above Three Lists</b>	<b>14,376,284</b>
Principal Register	14,352,545
Total Announced on March 9, 2013	14,352,533
Total Announced on July 18, 2013	14,388,781

The IEBC went on to explain that, when it met on February 18, 2013, it realized some names in the “Green Book” had not been included in the provisional voter register because some BVR kits had been damaged or dis-configured and could therefore not relay the data they contained: “The use of the ‘Green Book’ in the affected polling stations resulted in an upward variation in the registered voters at the affected polling stations.” Why did the IEBC fail to realise this for so long? How could it have published a Principal Register without ensuring that all data had been captured?

Even if it is true that data from dysfunctional BVR kits had to be added to the provisional voter register, the IEBC has not provided details regarding where such additions were made. It is impossible to differentiate between “transferred” voters and added voters based on available data.

20 Supreme Court of Kenya. April 16, 2013. “Full Judgment – Presidential Election Petition 2013,” paragraph 73(g). Available at <http://www.judiciary.go.ke/portal/full-judgment-presidential-election-petition-2013.html>.

### Changes in the Number of Registered Voters in Kenya

Date	Number of Registered Voters	Change from Previous Total
December 18, 2012	14,340,036	N/A
February 24, 2013	14,352,545	+12,509
March 2, 2013	36,236 voters without biometrics	N/A
March 3, 2013	14,336,842	-15,703
March 9, 2013	14,352,533	+15,691
July 18, 2013	14,388,781	+36,248

In addition, if the names and other biographical data of voters without biometric information were collected during the voter registration process, why weren't *all*

voters gazetted in the Principal Register? According to the IEBC, the "Green Book" was compiled during registration. What then, stopped the Commission from adding all names to the Principal Register?

Perhaps the most glaring issue is the fact there is no way to resolve the various, different totals of registered voters. During the Supreme Court petition hearings, the IEBC claimed the final, official register contains the Principal Register, the list of voters without biometric data and 12 trainee registrations. If that is true, why don't any of the total numbers of registered voters announced by the IEBC reflect this number?

Finally, Kenyans still do not know which voter register was used in the 2013 election. And, one year after the election, it remains unclear how many registered voters there are in Kenya.

In the aftermath of the election, the ramifications of multiple voter registers have become evident, primarily through the case of Kethi Kilonzo. After the death of her father, Senator Mutula Kilonzo, Kethi submitted her qualifications to the IEBC to run for his seat. The IEBC officer in her home county of Makueni cleared her as an eligible candidate. Soon after, The National Alliance (TNA) party accused Kethi of being ineligible to run for the seat, because she did not meet the requirement of being a registered voter. The TNA made this claim despite the fact that she was in possession of a voter registration acknowledgement slip, which showed that Kethi had registered in Langata Constituency in Nairobi County. During the tribunal hearing resulting from the accusation, the Makueni IEBC officer testified that, although he could not find her in the register of voters in Makueni, he had cleared her because he was afraid of being attacked by the crowd of people who had accompanied her to submit her papers. Other IEBC officials testified they could not locate Kethi's name in any of the voter registers. They were unable to check all the voter registers where her name could feasibly appear because two of the "Green Books" were locked inside gubernatorial ballot boxes. With one conclusive voter register, it would have been possible to check for Kethi's name in one place and it would have been possible to reach a conclusion. At the very least, if the "Green Book" was the same as the Principal Register, the IEBC could have simply consulted the Principal Register to ascertain the relevant information.

The IEBC also accused Kethi of having stolen her voter registration card, which she produced to prove that she had registered. According to the IEBC, the serial number of this card shows it originated from the book of acknowledgment slips used to register former President Mwai Kibaki when he launched the voter registration process in November 2012. The IEBC claims it did not use that book of slips for anyone else. It is perhaps worth noting that the serial number of Kethi's slip is 2,058,624. The slip used to acknowledge Kibaki's registration is 2,058,601.

## The Effect of Changes to the Voter Register

One reason why it is problematic for the voters' register to be in flux is the consequence that it cannot be used as a check on various types of electoral fraud. An Africa Centre for Open Governance (AfriCOG) poll carried out in May 2013<sup>21</sup> revealed several problems with the voter register on election day:

- 16 per cent of respondents knew of people who registered to vote but were not allowed to vote on election day.
- Only 50 per cent of respondents said that they were identified in the electronic voter register.
- 10 per cent of respondents said their names were missing from the voter register altogether.
- 18 per cent of respondents said there was a mix-up of names in the voter register.
- 8 per cent of respondents said they saw people vote, despite the fact their names were not in the voter register.

The People's Court website features detailed examples of the above issues (re-printed as received):

### *One Person, One Vote?*

**D. Wangombe:** My sms to IEBC told me that I was registered at St. Mary's in Karen though my slip showed that I was registered at NCC hall. These two polling stations were in the same compound and therefore that did not worry me at all. I joined the line at about 6:30 a.m and about 12:00 p.m, the polling clerk informed me that they were unable to find my name in their register at St. Mary and I better try at NCC hall. I left and joined the line at NCC hall and at about 7:30 p.m, the clerk on duty here again told me that my name was missing. He however without any question gave me the ballot and allowed me to vote which was clearly against the law. A Mr. Maina who was the guy in-front of me also missed in the register but was also allowed to vote...The question is how many who never registered were allowed to vote?<sup>22</sup>

21 See the poll results at <http://africog.org/surveys/post-election-exit-poll>.

22 <http://www.thepeoplescourt.co.ke/voting-experience/291-douglas-wangombe-my-voting-experience>.

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## Multiple Registers

**D. Tyrell:** Hi, i am a registered voter read attachment. on march 4th 2013, i went to vote as usual. there were three queues. they checked my name in the BVR and truly i was there. they counter-checked from the first register, i was conspicuously missing, i demanded voting and i made a lot of noise. that prompted the security officer around to escort me to the second queue. Again my name was missing still i protested and i was escorted to the third queue. upon reaching there i angrily threw my ID card on the table Plus my Acknowledgement slip. my name was also missing from the third register. sensing trouble too, the clerk hurriedly gave me the six forms since the crowd was cheering and insisting that i vote. so i voted.<sup>23</sup>

## Voter Verification

**G. Mutua:** Dear sir/madam, I wanted to inform you that I too was affected by the incompetence of the IEBC. I registered with my national ID at the Green span mall to vote at the Donholm Primary School and was given an acknowledgement slip. I confirmed by SMS that I was indeed registered - the SMS gave my full name and indicated that Donholm Primary school was my polling station but on the material day I stood 4.5hrs in line only for some...to tell me that my name was neither in the manual register or in the biometrics register. So I didn't vote. All the years before when we were registering manually I have always found my name on the register.<sup>24</sup>

## Voter Turnout

Closely linked to such confusion around the voter register is voter turnout. In addition to allowing for analysis of geographical and historical trends, voter turnout statistics act as a check on fraud. By identifying implausibly low or high voter turnout rates, it is possible to locate areas where irregularities may have occurred.

In its analysis of voter turnout in the 2007 General Elections, the Kriegler Commission took the position that voter turnout rates above 85 per cent are implausible. This is because some number of voters will always be sick, otherwise committed or temporarily away from areas where they are registered. A turnout rate above 85 per cent “clearly suggests the existence of ‘ballot stuffing’, which requires collusion between the polling station staff – a clear indication of biased recruitment – compounded by inadequate training and supervision”<sup>25</sup>

Given that the 2013 register was compiled from scratch and presumably included fewer unqualified voters, it may be reasonable to accept 85 per cent turnout as genuine. In fully 36 per cent of counties, however, turnout was above 90 per cent. This seems surprising, since such high rates are generally seen only in countries where voting is mandatory. In Australia, where voting is required by law, the highest turnout recorded was 96 per cent. Yet the 2013 presidential election results show turnout of 96 per cent and above in two constituencies.

**The Supreme Court-ordered scrutiny of 22 specially selected polling stations showed that 16-18 of those polling stations experienced voter turnout in excess of 100 per cent, whether figures**

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23 <http://www.thepeoplescourt.co.ke/voting-experience/299-douggrey-tyrell-my-voting-experience>.

24 <http://www.thepeoplescourt.co.ke/voting-experience/294-g-mutua-my-voting-experience>

25 IREC, p. 86.



from Form 34 or Form 36 were used. When using the “Green Book”, two stations showed voter turnout of over 100 per cent. At least 28 Forms 34 showed the number of valid votes as higher than the number of registered voters. Despite this evidence, no results were cancelled.

The MARS Group, the only organisation to have analysed all publicly available Forms 34, identified 51 polling streams showing turnout rates over 100 per cent.<sup>26</sup>

Additionally, AfriCOG’s analysis of Forms 34 revealed significant inconsistencies with regard to voter turnout. For example, in Turkana Central, three polling stations show turnout of over 100 per cent using the number of registered voters per polling station published by the IEBC on February 24th, 2013. However, when using the number of registered voters recorded by polling station officials, the turnout drops below 100 per cent (*see below*).

Turkana Central Polling Station	Votes Cast	Registered Voters (as published by IEBC)	Voter Turnout	Registered Voters (on Form 34)	Voter Turnout
PS 49	134	66	203.0%	165	81.2%
PS 82	1,019	1,010	100.9%	1,515	67.3%
PS 91	269	161	167.1%	300	89.7%

In Githunguri and in Tharaka, the Form 34 figures indicate turnout exceeding 100 per cent.

Githunguri Polling Station	Votes Cast	Registered Voters (on Form 34)	Voter Turnout	Questionable Votes
PS 19 Stream 3	632	628	100.6%	4

Tharaka Polling Station	Votes Cast	Registered Voters (on Form 34) ORIGINAL	Voter Turnout	Registered Voters on Form 34 CHANGED	Voter Turnout	Questionable Votes
PS 72 Stream 1	149	126?	118.2%	166	89.8%	~23

26 MARS Group Kenya. “Mars Group Kenya Audit Report on 2013 Kenyan Presidential Election Results.” Available at <http://www.marsgroupkenya.org/blog/2013/09/03/mars-group-kenya-report-audit-report-on-2013-kenyan-presidential-election-results/#more-3166>.

In Tharaka, the presiding officer noted the problem on the form. The note read, "The number of voters was higher than the registered voters. This was authorised by the returning officer (RO) as he argued they were registered at constituency level". Clearly, given that the number of registered voters on the form was then changed, the RO's explanation does not seem accurate.

Furthermore, when comparing voter turnout in 2013 to the average turnout of the 1997 and 2002 General Elections and the 2005 referendum, almost every constituency shows a huge increase in voter turnout, ranging from 15-39 per cent. Such huge jumps in turnout seem unlikely and should give pause to those attempting to understand voter turnout in Kenya during the 2013 General Elections.

Constituency Name	Voter Turnout Using February 2013 (Principal) Register	Average Turn-out (1997, 2002 and 2005)	Difference between 2013 Turnout and Average
POKOT SOUTH	93%	68%	25%
LOIMA	80%	41%	39%
SAMBURU NORTH	88%	64%	24%
KAJIADO SOUTH	91%	65%	26%
SIGOR	92%	73%	19%
TURKANA CENTRAL	74%	44%	30%
IGEMBE NORTH	93%	62%	31%
KAPENGURIA	88%	69%	19%
NAROK SOUTH	88%	66%	22%
NDARAGWA	93%	72%	21%
NDIA	92%	71%	21%
LARI	96%	71%	25%
RANGWE	96%	63%	33%
KILGORIS	89%	69%	20%
MUKURWEINI	94%	76%	18%
KACHELIBA	88%	53%	35%
MBITA	95%	65%	30%
OTHAYA	94%	79%	15%

## Conclusion and Recommendations

One year after the election, the IEBC has yet to provide Kenyans with a definitive and verifiable voter register. It has failed to explain the relationship between the different registers it has produced, and it remains unclear how, if at all, the “Green Book” can resolve the many unexplained variations.

While it is true that the law allows for multiple registers, those registers are meant to be subsections of one, verifiable principal register. Section 4 of the Elections Act clearly states that the principal register shall be comprised of “a poll register in respect of every polling station; a ward register in respect of every ward; a constituency register in respect of every constituency; a county register in respect of every county; and a register of voters residing outside Kenya.”<sup>27</sup> In fact, the judgment of the Supreme Court acknowledges this point:

The multiplicity of registers is a reality of Kenya’s voter registration system which is recognized in *law* and widely acknowledged in *practice*. The register once developed and finalized, is disaggregated and dispersed to various electoral units, to facilitate the process of voting. Such units include the polling stations, the wards, the constituencies, the counties, and even the Diaspora voting centres.<sup>28</sup>

- Supreme Court of Kenya, 2013

The various registers produced by the IEBC do not correspond to these categories. Given the Supreme Court judgment, which allows the IEBC to use multiple registers (even though they do not correspond to the registers as listed in the Elections Act), future elections will continue to be marred by problems related to voter registration. The IEBC’s ability to use any one of a number of registers means that there is no guarantee a registered voter’s name will appear, and there will be no way to verify if a voter did indeed register. This will make it impossible to track trends in turnout, and it will be difficult to prove cases of turnout above 100 per cent.

It also remains unclear how the IEBC handled the inconsistencies and errors on the various tallying forms. As detailed in previous sections, AfriCOG evidence shows multiple cases of turnout of over 100 per cent. Why were the results from these polling stations not cancelled? Where numbers were illegible, what did IEBC officers do? How is the IEBC handling on-going by-elections? Which register is being used?

The IEBC has also failed to inform Kenyans what measures, if any, are being taken to improve the voter registration process for the future. As explained above, voter registration could be made more efficient with more BVR kits and with measures to synchronize national ID registration with voter registration.

According to the law, voter registration in Kenya is continuous. Kenyans who wish to register to vote should, according to this law, be able to do so at any time.<sup>29</sup> Does the IEBC have the capacity, organization and procedures in place to carry this out?

27 *Elections Act*, Section 4(1)(a)-(e).

28 Supreme Court of Kenya. April 16, 2013. *Full Judgment – Presidential Election Petition*, paragraph 249. Available at <http://www.judiciary.go.ke/portal/full-judgment-presidential-election-petition-2013.html>.

29 *Elections Act*, Section 3.

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Clearly, voter registration processes in Kenya are rife with unresolved problems. If the IEBC wishes to maintain public confidence, it will prioritize the creation of a single, verifiable Principal Register of voters. This process should be open to public scrutiny. The commission will also create reliable, verifiable and uniform back-up measures for situations in which registration and identification technology fail. In this vein, AfriCOG proposes the following recommendations:

***Recommendations for the IEBC:***

- Provide the public with a clear, detailed explanation of how the voter register was compiled, including dates and numbers. Provide ward, constituency, county and national level statistics related to the final, verifiable principal register of voters.
- Explain any inconsistencies in voter register statistics, especially those related to turnout of over 100 per cent.
- Develop and publicize a plan to address shortcomings of the voter registration process, including inadequate BVR kits, unequal distribution registration centres to meet the needs of potential voter population, lack of adequate registration centres in remote areas.
- Provide the public with clear instructions on how to register to vote throughout the year, including where to go to register, what documents are required, and how to verify successful registration.
- Eliminate the “Green Book” once and for all. Paper versions of the register should be print-outs of the single, verifiable, electronic register.

***Recommendation for responsible Ministry:***

- Develop a plan to synchronize voter registration and national ID registration.







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