



AfriCOG/KPTJ Election Series

Not So Final?

Analysis of IEBC's Report on
March 2013 General Election



Africa Centre
for Open Governance



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Foreword

In line with our mission to promote permanent civic vigilance on key governance issues, the Africa Centre for Open Governance (AfriCOG) is pleased to present the following report on pending issues related to the March 2013 general election in Kenya.

In April 2014, the Independent Electoral and Boundaries Commission (IEBC) released what it called its “final” results from the March 2013 general elections. This report was the third such published since the election. Sadly, despite the IEBC’s assurance that the report would provide an analysis of the “counting and tabulation to better understand the participation of the electorate,” AfriCOG’s review finds several worrying gaps in the information contained in this latest release of results. In fact, the report contains less detailed information than the previous ones.

It is essential that the IEBC addresses the issues raised in the following analysis. Specifically, AfriCOG recommends that the IEBC release the data that is currently missing from the public record as soon as possible, along with an explanation as to why the results have been incomplete for well over a year since the election.

Kenyans have a right to a full record of election results, and a comprehensive record of the results is critical if the IEBC wishes to maintain public confidence and promote transparency and accountability. This data is also vital for purposes of self-reflection, for it can shed light on important trends and patterns in candidate and voter behaviour over time.

It is our hope that the Kenyan public will take up the call to demand a full and detailed account of the election results and to work for greater electoral integrity in the future.



Introduction

In March 2013, Kenyans went to the polls in what was to be a historic election. A new constitution and the introduction of electoral technology promised Kenyans a free, fair and transparent election. Indeed, a host of new electoral laws and new technology related to voter registration, voter identification and results transmission together assured Kenyans that the electoral process would be open, publicly verifiable and in line with high constitutional standards of fairness. Such provisions were meant to mark a turning point in Kenya's electoral history. Unlike past elections, this poll was to be characterised by peace, openness and procedural transparency.

Happily, peace largely did prevail in 2013, apart from some incidents before and during the elections. Unfortunately, however, the IEBC's administration of the election fell far short of constitutional standards, which specifically require that elections be transparent and administered in an impartial, neutral, efficient, accurate and accountable manner.¹ In its previous analyses, the Africa Centre for Open Governance (AfriCOG) explained the pending questions related to voter registration and counting and tallying.² In light of the Independent Electoral and Boundaries Commission's (IEBC) most recent release of results in April 2014, AfriCOG presents an analysis of the election results and the related pending questions.

The Record of Results Releases

A complete and verifiable set of election results includes all valid votes, rejected votes and total votes cast per polling station. In the interest of transparency, the IEBC would also publish the number of ballots issued per polling station on election day. Using this data, any member of the public would be able to check official results against what had been tallied at the polling station level. They could then verify those results or question discrepancies.

On 9 March 2013, the IEBC announced presidential results. This release included a count of valid votes, rejected votes, votes cast and registered voters at the constituency level. The number of registered voters per constituency was not released with this set of results. Three months later, in July 2013, the IEBC released results for all other elective offices. This report also contained figures of valid votes, rejected votes and votes cast, but several of these figures were missing for various constituencies (see Table 1). In April 2014, the IEBC released another round of results for all elective offices. In this latest report, the IEBC only included the number of valid votes per county (per constituency in some cases).

1 Constitution of Kenya 2010, Article 81 (e) (iv), (v).

2 See Voter Registration and Election Day and its Aftermath <http://kptj.africog.org/voter-registration-for-the-2013-general-elections-in-kenya/> and <http://kptj.africog.org/election-day-2013-and-its-aftermath/>

Table 1. Availability of Results from the 2013 Kenyan General Election

Office	Polling station level results available?	Complete constituency level results (valid, rejected and votes cast) available?	Complete county level results available?
President	Partially*	Yes	Yes
Governor	No	No	Partially**
Member of National Assembly	No	Partially***	Partially
Women's Representative	No	No	Partially****
Senator	No	No	Partially*****
County Ward Representative	No	No	No

*2,585 polling station tallying forms still missing

**Missing rejected vote figures from 3 constituencies

***Rejected votes are shown as 0 in 7 constituencies

****Rejected votes missing in 4 counties and reported as 0 in 2 counties

*****Rejected votes missing in 7 counties and reported as 0 in 1 county

Notably, none of the releases contains polling station level results, making it impossible to verify that the national, official results reflect the count at the polling station level. While the IEBC has uploaded some Forms 34 (polling station-level result for the presidential race) to its website, 2,585 of these are still missing from the public record.³ No polling station-level forms for the other five non-presidential positions for which elections were held have been published.

In effect, over the last sixteen months the IEBC has released a series of aggregate figures that cannot be independently cross-checked and are therefore of no use in informing the public. In fact, over time, the IEBC has released progressively less useful in-

formation. Between July 2013 and April 2014 the format of results released has changed such that the commission went from providing data on votes cast, rejected votes, and valid votes to providing only valid votes.

Fifteen months after the election, the record of results still remains incomplete. These gaps are in direct contravention of the IEBC's own regulations, which clearly state that constituency returning officers must announce results immediately after receiving and tallying all polling station results.⁴ At the county level, returning officers are also required to announce results immediately after they have received the constituency level results.⁵

3 MARS Group. Available at <http://www.marsgroupkenya.org/elections/pages/marsaudit/>.

4 Election General Regulations 2012 83(1)(b)

5 Election General Regulations 2012 87(3)(a)

Analysis

Results

A complete set of verifiable results includes valid votes for each candidate, total valid votes, total rejected votes and total votes cast, all per polling station. At the very least, a complete set of verifiable results, as explained above, should be provided per constituency, along with all polling station tallying forms. This is the only way that announced results can be publicly traced and verified. That is, the public should be able to trace results from Form 34

(polling station tally) to Form 36 (constituency level tally) to the final official results, as announced at the National Tallying Centre. This should be available for all elective offices.

The IEBC's published results are incomplete. Specifically, the July 2013 release showed either 0 rejected votes or – perhaps more problematically – no figures at all for rejected votes in several areas. Notably, there were rejected votes for the presidential race in all of these areas, when the presidential results were first published. See the table 2 below.

Table 2. Constituencies with Incomplete Results as of July 2014

Constituencies	Rejected Votes: President	Rejected Votes: Governor	Rejected Votes: Senator	Rejected Votes: Women's Representative	Rejected Votes: Member of National Assembly
Baringo	1,145 (.73% of votes cast)	0	N/A	N/A	N/A
Butula	309 (.85% of votes cast)	N/A	N/A	N/A	0
Central Imenti	510 (1.12% of votes cast)	N/A	N/A	N/A	0
Chuka/Igambang'ombe	265(.52% of votes cast)	N/A	N/A	N/A	0
Embakasi South	643 (.81% of votes cast)	N/A	N/A	N/A	0
Garissa	518 (.56% of votes cast)	N/A	N/A	0	N/A
Kajiado	2,055 (.77% of votes cast)	N/A	Left blank	Left blank	N/A
Kitui	2,629 (.95% of votes cast)	Left blank	Left blank	Left blank	N/A
Lamu	637 (1.44% of votes cast)	0	Left blank	Left blank	N/A
Nambale	282 (1.04% of votes cast)	N/A	N/A	N/A	0
Narok	1,648 (.70% of votes cast)	N/A	Left blank	N/A	N/A
South Imenti	736 (1.05% of votes cast)	N/A	N/A	N/A	0
Taita Taveta	1,023 (1.11% of votes cast)	0	0	0	N/A
Tana River	509 (.79% of votes cast)	Left blank	Left blank	Left blank	N/A
Teso South	248 (.66% of votes cast)	N/A	N/A	N/A	0
Trans Nzoia	4,661(2.33% of votes cast)	N/A	Left blank	N/A	N/A

The lack of data is worrying for several reasons. First, there are important differences in results sent via the electronic results transmission (ERT) system and results recorded on Forms 34. Where possible, AfriCOG compared what had been electronically transmitted from individual polling stations to what had been recorded on the polling station forms. In Wambooo polling station in Masinga, the presiding officer electronically sent a total of 280 votes for Odinga to the IEBC. Form 34 from that polling station shows 380 votes for Odinga. In Masinga constituency overall, which was made up of 143 polling stations, the IEBC reported that Odinga won 33,361 votes. Electronically transmitted results from about 13,000 polling stations around the country, however, showed that he had won 33,780 votes. It is unclear how results sent earlier from only about 30 percent of all polling stations could have been larger than the final result from all polling stations. There were similar discrepancies found in Uhuru Kenyatta's results and Martha Karua's results.

Clearly, if the ERT system had remained functional, it would have served to act as an effective check on the manual count. Having all polling station Forms 34 for the presidential race available would allow the public to check what was recorded on paper against what was electronically transmitted. This check would identify problematic polling stations and allow for specific remedies to be considered.

Second, AfriCOG also observed differences between results recorded on Forms 34, Forms 36 and results announced at the Bomas of Kenya. In Mandera South, for example, the Forms 34 showed that Uhuru Kenyatta won 9,031 votes. In contrast, however, the IEBC announced that he had won 9,431 votes. In Isiolo North, Forms 34 showed that Raila

Odinga won 12,070 votes. The IEBC announced a final result of 12,335 for Odinga in that constituency. Such discrepancies were seen all around the country. A complete record of Forms 34 and Forms 36 would allow the public to cross-check results and understand how and why numbers changed. The IEBC should also have explained to the public how and why it resolved these discrepancies.

On 20 April 2014, the IEBC released results that it described as "an analysis on the counting and results tabulation to better understand the participation of the electorate in casting ballots for the six elective positions".⁶ This latest release of results (April 2014) provides even less information than previous ones. The release includes the number of valid votes for all elective offices, but it provides no figures at all for rejected votes or votes cast for non-presidential offices. Without the latter figures, it is impossible to conduct checks such as a comparison of votes cast for the different races, a comparison of the percentage of rejected votes in different constituencies and counties and a calculation of voter turnout. These analyses would serve not only as checks but also as valuable tools for understanding Kenyan voting patterns and problem areas.

Moreover, neither the July 2013 nor the April 2014 release provides numbers per constituency (other than for Member of National Assembly). There are no polling station level results for any race.

6 IEBC. 2014. "4th March 2013 General Election, Election Data," iv

Analysing the Results

In order to attempt a comprehensive analysis of results, we imputed the number of rejected votes for areas in which the figures were missing. That is, where there was no number given for rejected votes, we computed the ratio of rejected votes to valid votes nationally and then applied that ratio to the areas that were lacking figures for rejected votes. Using that computation, we calculated total votes cast as of July 2013. Using this calculation, there is a difference of 295,016 votes cast for president (highest number of votes cast) and senator (lowest number of votes cast). Using IEBC’s dataset, and leaving rejected votes as 0 where no figures were provided, the largest gap in votes cast is 87,976 (between senator and governor).

Table 3. Inconclusive Total Votes Cast

Office	Votes Cast (with imputed rejected votes)	Votes Cast using what IEBC provided (July 2013)
President	12,330,028	12,330,028
Governor	12,289,554	12,292,432
Senator	12,035,012	12,380,708
Women’s Representative	12,236,948	12,379,520
Member of National Assembly	12,316,338	12,313,028
Difference between minimum and maximum of above 4 elective offices	295,016	87,976

Voter Turnout

Perhaps unsurprisingly, voter turnout figures are also questionable. A calculation of turnout for each of the various races shows that the gaps between turnout for different races are the largest in counties where figures are missing. This holds true even if extrapolated rejected votes are replaced with 0 rejected votes. In Tana River, where there are no figures for rejected votes for the gubernatorial, senatorial and women’s representative races, there is a 3.77% difference in turnout for the senatorial and women’s representative races. Since polling station officers were required by law to give each voter all six ballots, it is unclear how so many voters would have been able to cast ballots for some races and not others.

Voters’ Register

To date, the total number of registered voters in Kenya is unknown. This is because the IEBC claims that the final register is the ‘green book’, a collection of notebooks containing hand-written details of all registered voters, prepared by IEBC staff during the registration exercise. The total number of registered voters in this green book has never been released. The numbers that have been released have lacked consistency over the last year.

In March 2013, the IEBC reported that the total number of registered voters was 14,352,533. This figure differed from what had been published in the Principal Register of Voters in February 2013. The July release did not include a count of registered voters per constituency. Instead, the IEBC published a new national total of registered voters. The commission said that the final total was 14,388,781, which was the sum of the voters in the Principal Register and

the list of voters whose biometric information could not be captured.

The IEBC has yet to explain how the green book fits into this picture. What is the total in the green book and how does it relate to the total published in July? Are voters without biometrics included in the green book? How does the list in the green book relate to the Principal Register?

These questions have taken on new urgency in light of the IEBC's recent admission that the accuracy of the voter register was compromised. In its audit report, the IEBC revealed that the existence of multiple registers impacted the accuracy of the register and that the register was missing data, due to "staff negligence." In fact, one official from the IEBC admitted that there were three registers in use, which was against the law. "If there was one single failure of the IEBC, it was the sloppy voter register. During voting, some polling stations, especially in Central and Rift Valley, were authorized to use the Green Book, which is clearly illegal," the official said⁷.

Table 4. Voter Registration in Kenya

Provisional Register	14,340,036
Special Register	36,236
Principal Register	14,352,545
Total Announced on March 9, 2013	14,352,533
Total Announced on July 18, 2013	14,388,781
Green Book	UNKNOWN

Conclusion and Pending Questions

Sixteen months after the landmark March 2013 Kenyan general election, the IEBC has yet to release a complete set of results for all elective offices. Instead, its multiple releases have provided Kenyans with incomplete, piecemeal information. As detailed above, the problems with the results include missing figures, a complete lack of polling station results for the non-presidential races, 2,585 missing polling station forms for the presidential race, and a constantly changing total number of registered voters.

Strikingly, the IEBC's latest release does not improve upon its previous release by providing missing figures. Instead, the April 2014 release provides even less complete information than its July 2013 release. It would have been reasonable to expect that after taking almost an additional year to update its results, the IEBC would have produced a complete and comprehensive set of results.

7 Walter Menya. September 20, 2014. "IEBC's audit report tells of messed-up register and corrupt officials." *Daily Nation*. Available at <http://mobile.nation.co.ke/news/IEBC-Audit-Report-2013-General-Election/-/1950946/2460346/-/format/xhtml/-/b2f3xq/-/index.html>

In its judgment, the Supreme Court ruled that the green book is a primary document used to originate the Final Principal Register of Voters.⁸ As such, it is a critical component of the voter registration process and of the compilation of the register of voters. The IEBC has failed to effectively inform the public about the status of the green book.

Recommendations to the IEBC

While the IEBC's admission that there were significant problems with the register is a step forward with regard to transparency, it is critical that the full report be made public so that Kenyans can fully understand the findings. In order to promote transparency and accountability and to ensure that the public regains confidence in elections and in the commission, we recommend the following:

- Release the full audit report and ensure that IEBC commissioners and senior staff take responsibility for failures, not just mid-level staff
- Release the missing 2,585 Forms 34 so that there is a complete public record of the polling station-level presidential results
- Explain how and why results shown on Forms 36 do not correspond to the corresponding Forms 34

- Explain how and why final presidential results were announced without the results from ALL Forms 34
- Explain why the figures for rejected votes are missing in so many areas
- Release a complete set of results for all offices, including valid votes, rejected votes and votes cast per polling station and per constituency
- Explain how the number of votes cast can differ significantly between the elective offices, and explain why the latest release of results does not include rejected and cast votes.

Re-establishing Trust

In order to re-establish public faith in the electoral process and in the commission, the IEBC should work to follow through on reforms and the above recommendations well before the next election. To avoid the problems that can result from aggregating results at multiple levels, the IEBC might also consider abolishing constituency and county tallying centres altogether. Instead, it could work to strengthen the integrity of counting and tallying procedures at the polling station level and create an effective mechanism whereby results can be transmitted straight from polling stations to the national tallying centre. Such a reform, combined with strict enforcement of the law regarding the posting of tallying forms, could go a long way in promoting transparency in Kenyan elections.

8 Judgment of the Supreme Court of Kenya, page 93.

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The views expressed in this report are those of AfriCOG alone.

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