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An Assessment of Kenya's Preparedness for the 8 August 2017 General Election

A Summary of Key Findings and Recommendations

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A Summary of Key Findings and Recommendations

Despite the hope that marked the 2013 elections in Kenya, a wide range of irregularities, inconsistencies and errors during multiple phases of the electoral cycle left the country further divided and without answers to a series of questions about the administration of the election. In fact, at the end of the last election cycle, there was deep distrust about the validity of the presidential result, which had been announced before all tally sheets had been submitted. Moreover, serious weaknesses in the law, especially with regard to constitutional provisions for leadership and integrity, and severe technical failures, including the collapse of the electronic results transmission system, the existence of multiple voters' registers, and numerous errors and inconsistencies on polling station tally forms, had been left unaddressed and unexplained. Unsurprisingly, in the aftermath of the election, public faith in the Independent Electoral and Boundaries Commission (IEBC) plummeted.

As the country now prepares for the next general election, scheduled for 8 August 2017, it is important to evaluate what has changed since 2013 and to identify where problems remain. In this report, which is the first in a series, the analysis focuses on an assessment of activities in the pre-election phase. Future editions will cover later phases of the electoral cycle.

The IEBC is now headed by a new set of commissioners, who took office late last year. This change came in the aftermath of several months of opposition-led protests demanding an overhaul of the Commission over allegations of bias and corruption. Some of the protests were violently dispersed by the police, with scores of people injured. The new commissioners are working on an extremely tight timeline under strenuous conditions characterized by significant public apprehension. Much of this apprehension is rooted in the 2013 election, the results of which lacked broad public legitimacy and left the country deeply divided. Since then, mistrust has only grown. The political environment has been characterized by shrinking space for public engagement and growing intolerance of dissent, even as the government finds itself implicated in multiple corruption scandals.

Unfortunately, preparations thus far have been plagued by several of the same problems that marred the last election cycle, suggesting a dearth of lessons learned. Notable examples include the following:

- Delays and irregularities haunt the procurement of the integrated elections management system (IEMS).

- Important proposed changes to the election law, including campaign finance regulations and gender parity bills have been defeated by parliament.

- Long-standing laws, especially those related to leadership and integrity, have been left unenforced by authorities.

- Voter registration was marked by serious and widespread technological and administrative problems, most of which are the same problems that have tainted past registration processes.

- Similarly, party primaries have been characterized by widespread chaos, administrative and technical disorganization, intra-party violence, the lack of membership lists and registers and a general lack of preparedness.

- Evidence points to political elites' roles in fueling pre-election violence around the country. This violence has led to several deaths and an environment of fear in certain regions.

In order to salvage the credibility of the current electoral process, we recommend the following urgent actions:

- The IEBC must prioritize its relationship with the public. As a first step, it is important the Commission develop a long-term communication strategy that keeps the public informed of developments in a timely fashion. Traditional and social media can and should be used to address issues such as the practical implications of the new amendments to the electoral law, glitches in voter registration processes, questions around the procurement of election technology, upcoming deadlines, findings of the audit of the register and other relevant topics. In this way, the public knows what to expect and how the IEBC is dealing with problems. Elections are never perfect, but suspicion and criticism can be preempted and public confidence can be boosted by timely and meaningful communication.

- The IEBC and the Registrar of Persons must respond to public questions and criticisms related to the MVR exercises. Registration was rife with problems, including nonfunctional and dysfunctional BVR kits, the unexplained use of green books, shared ID numbers, severe difficulties in obtaining IDs, the lack of security of data and many logistical hurdles at registration centres. Although registration is now closed, the IEBC and the Registrar of Persons should explain what they are doing to fix the problems that plagued registration up to the present. Moreover, since some registration problems have implications for what voters may face on election day, it is even more urgent that the IEBC explains how it is dealing with public concerns in this area.

- In order to begin to change the pattern of electoral impunity in Kenya, it is critical that stakeholders create and maintain the will to enforce the law. Kenya is fortunate to have one of the world's most progressive constitutions, which vests power in the people and demands high levels of professionalism and selfless service from political leaders. This election offers an opportunity to start with a relatively clean slate. If Chapter Six provisions are enforced, the new leadership could be of a higher standard, and that could have long-term domino effects with regard to more transparent and accountable institutions.

Parliament must fulfill its duty to pass legislation for the implementation of the two-thirds gender law. There have been several proposals over the years to realize the constitutional standard, including those in the Attorney General's 2015 taskforce report, the Green Amendment Bill, 2015, and several others. In order to fulfill their responsibilities under the constitution and to avoid a constitutional crisis, it is now imperative that legislators consider the options and make a decision as soon as possible.

Table: IEBC activities and deadlines

Activity	Originally Scheduled by IEBC and/or law	On Time?	New Deadline	Comments
Parties' membership lists due to IEBC	17 March	No	27 March	As of 5 April, 57 parties had submitted their lists. The IEBC reported that ten parties had not yet submitted their lists.
Parties' lists of candidates participating in primaries due to IEBC	5 April	Yes	N/A	N/A
Date by which election technology to be delivered	10 April	No	10 June	The IEBC asked MPs to amend the law in order to allow the Commission to arrange for delivery two months ahead of election day. The first kits arrived on 14 April. The remainder are scheduled to arrive in early June.
Date on which IEBC to gazette names of candidates in all party primaries	12 April	Yes	N/A	N/A
Parties conduct primaries	13 April – 26 April	No	1 May	After an NGO sued the IEBC for allegedly shortening the period allowed by the law for the conduct of primaries, the High Court in Malindi extended the timeline. The law states that parties have until 60 days before the election (7 June) to submit their lists of candidates to the IEBC.
Public inspection of voters' register begins	10 May	No	11 May	The IEBC has not explained this delay.
Parties submit candidates' names to IEBC	10 May	Pending		
Date by which Parliament must pass implementing legislation regarding the two-thirds gender provision	28 May	Pending		
Public inspection of voters' register ends	9 June	Pending		
Publication of all nominated candidates	10 June	Pending		