

LEGITIMISING ELECTORAL PROCESS

The Role of Kenya Domestic Observation Programme (K-DOP) in Kenya's 2002 General Elections*

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INTRODUCTION

The past two decades have seen a movement in Africa from authoritarian regimes toward popular democracy through electoral rule. Local and international election observation is now a common practice in almost all elections that take place on the continent. Elections must be free, fair and meaningful and must be perceived to give legitimacy to the incumbent government.

It has been suggested by various analysts and commentators that Africa, and groups within the democratic polity, should accept as a crucial component of the continental democratisation process the important role of domestic election observation in ensuring electoral legitimacy, fairness, and popular acceptance of election result (Abbink, 2000; Von Cranenburgh, 2000; Mair 1999). Implicit in this statement are several assumptions about domestic observer groups: that they are non-partisan and are experienced in the conduct of election observation; that they operate within an acceptable code of conduct; that they have a clearly defined notion and understanding of 'free and fair elections' and that they have the necessary technical and administrative capacity to observe the entire election process (before, during and after). If this proposition is to be acceptable as a political canon in a democratisation project on the continent it is vital that it be subjected to critical scrutiny and empirical verification. In this context K-DOP has played a legitimising role in helping foster democracy at a very sensitive and delicate trajectory in Kenya's political history, resulting from the changed nature of partisan competition, particularly at a time when there were high hopes for regime change.

* K-DOP, the Kenya Domestic Observation Programme is an initiative of the Kenya Episcopal Conference (KEC)/Catholic Justice and Peace Commission (CJPC), the National Council of Churches of Kenya (NCCCK), the Supreme Council of Kenya Muslims (SUPKEM), the Hindu Council, the Institute for Education in Democracy (IED), the Media Institute (MI) and Transparency International-Kenya (TI-K) committed to 'free and fair and peaceful' elections in Kenya.

** The views expressed in this paper are those of the author and do not represent those of EISA or any agency associated with EISA.

The 2002 general elections, the third multi-party elections in Kenya in ten years, signify a great surge in the wave of regime changes being experienced on the continent. It baffles many observers why all the woes, chaos and large-scale violence, which have been a feature of elections in Africa, did not seem to characterise the elections in Kenya. The violent outbursts and unleashing of Moi's loyalists during and after the elections, for which the media appeared to be waiting, did not happen. Kenya rewrote the history of election victories in Africa when Uhuru Kenyatta, leader of the incumbent party, did not even wait for the final tally to be announced before, with grace and dignity, he issued a press statement accepting the landslide victory of the National Rainbow Coalition (NARC) and the election of Mwai Kibaki as the next Kenyan president, succeeding the veteran nationalist, President Daniel arap Moi. Compared with the two previous elections (in 1992 and 1997), which were characterised by widespread allegations of electoral irregularity, such as ballot box stuffing, rigging, destruction of opposition votes, and violent clashes, the 2002 elections were generally hailed by all local and international observers who witnessed the unfolding of Kenyan political history as comprehensive, peaceful, transparent and conducted in a pleasant atmosphere.

How did Kenya end up with a widely accepted election result and a relatively low level of violence, given the past role of President Moi and the country's previous electoral history? I attempt to answer this question by analysing what is perceived and declared to be the politically significant role played by K-DOP in bringing the public back into the electoral process and positively affecting the election result.

This paper argues that the relatively successful conduct of the 2002 general elections in Kenya is partly attributable to the role played by K-DOP in the period before, during and after the elections. However, this role cannot be appreciated without understanding the political context under which the elections were contested. This paper uses K-DOP as a case study of best practice in the conduct of systematic and extensive election observation. A conscious decision was taken not to concentrate on the theoretical debate about election observation in order to make this contribution more accessible across several disciplines. It is structured in three parts: the political context of the 2002 general elections; the characteristics of K-DOP; and the strategies employed by K-DOP in monitoring the electoral process.

THE POLITICAL CONTEXT OF THE 2002 GENERAL ELECTIONS IN KENYA

The 2002 Kenya general elections, in which NARC emerge victorious, winning 126 seats, while the ruling party, the Kenyan African National Union (KANU), only managed to capture 63 seats, represents the triumph of opposition politics and an end to the twenty-four-year rule of President arap Moi, in elections described by many political commentators as a 'home-grown democracy'. However, the elections took place within the context of a political stalemate and the dire need for regime change.

President Moi had established a constitutional review commission to facilitate a comprehensive review of Kenya's national Constitution. For the first time the people of Kenya were given the opportunity to take part in such a review. The first Constitution of Kenya was designed at Lancaster House in London in 1963 by a few delegates, chosen to represent the people. This time the people of Kenya were able to take part in the making of a Constitution that would reflect their wishes, aspirations, hopes, and dreams for the future.

Shortly after the commission was appointed in January 2001, the process was marred by series of substantive and administrative nightmares. The ruling party (KANU) repeatedly tried to change the mandate and *modus operandi* of the commission to exclude or reduce the input of civil society formations, and used force to prevent and disrupt the participation of Kenyans in civil education gatherings as well as opposition parties' political rallies. Civil society and opposition political parties mobilised voices of dissent against the destructive actions of the state, arguing that the unrealistic timeframe for the scheduled release of the draft Constitution did not provide enough time for civic education and effective participation of citizens in the process. In response, President Moi introduced interim reforms by decree. This aggravated the already considerable political anxiety about Moi's interest in overruling the constitutional provision of a two-term presidency. In the same vein, fierce debate over the granting of amnesty for economic and political crimes dominated the political discourse and a motion was moved in Parliament to establish a truth and reconciliation commission to explore human rights violations committed since 1966. The lack of commitment and clarity about an appropriate strategy for dealing with the past resulted in the motion being sidelined in the national debate.

Prior to the elections, the state, through its agents, intensified both violent and non-violent attacks on opposition party activists. Police cracked down on progressive members of society who took a stand against undemocratic behaviour and the abuse of power by the state. It was reported in February 2002 in Kisii that James Orengo, a Member of Parliament (MP) and leader of Muungano wa Mageuzi (People's Movement for Change), a coalition of opposition and civil organisations, along with two other MPs, had been beaten by the police. The leader of Mageuzi was further accused by President Moi of plotting to overthrow the government, which further promoted police harassment.

At an opposition party rally in May, police arrested two MPs on charges of 'treason' for allegedly threatening the President, who then ordered police to record all speeches at political meetings. Subsequently, a petrol bomb attack was directed at the NARC leader – Kibaki – during a political gathering in a predominantly KANU stronghold. Observable trends in Kenyan politics during Moi's regime and the period preceding the elections clearly illustrate that the predominant interest of politicians was control of the state, which had been, and continues to be, the source of kleptocratic accumulation and the most significant arena of patronage and resources. The government, through its machinery, unequivocally sponsored

violence against political dissidents, with police and other terrorist agents cracking down on government critics.

In July 2001 police brutally assaulted a group of pro-democracy activists attending a prayer meeting and political rally in Nairobi in honour of 10 years of multi-party democracy in Kenya¹. Continued intra- and inter-ethnic and political clashes prevailed in the run-up to the elections, with an increasing number of people killed and hundreds of thousands displaced. The Central Depository Unit recorded a series of electoral killings and violent attacks. It was reported that electoral violence had claimed approximately 203 lives between January and August 2002.

The transition to multipartyism, which began with the 1992 election, was halted by the undemocratic practices of President Daniel arap Moi's *ancien régime*'s attempts to further political liberalisation. The inability of the greatly fragmented opposition parties and civil society to force further reform on Moi's government further contributed to the political stalemate. Moi's regime's refusal to honour the constitutional requirement to repeat those multiparty elections in 1997 forced civil society and opposition parties to embark on fierce protests that created cracks within KANU.

After a prolonged battle within KANU to choose a successor to Moi Kibaki, Wamalwa, and Ngilu formed the National Alliance for Change (NAC), which was later registered as the National Alliance Party of Kenya (NAK). Moi's defilement of the party structures and the announcement on 30 July 2002 of Uhuru Kenyatta as his likely successor sparked a great resistance and upheaval within KANU. The party's vice-president, George Saitoti; Kamba boss Kalonzo Musyako; Maasai leader William ole Ntimama; KANU's long-time Kikuyu standard bearer, Joseph Kamotho; and Raila Odinga took a hard line and rejected the selection of Uhuru Kenyatta as party president by forming the Rainbow Alliance, which, in effect, became an intra-KANU opposition group, which demanded a secret ballot to elect KANU delegates to the party's national conference in mid-October 2002. Moi's refusal to allow the free election of party delegates at the grassroots branches led to a unanimous decision by the Rainbow Alliance members to break away from KANU and join the opposition Liberal Democratic Party (LDP). The breakaway was led by Raila Odinga, former head of the largely Luo National Development Party.

On 14 October 2002, when Uhuru Kenyatta was announced as KANU's presidential candidate, the LDP also made a public announcement to the effect that it would forge a 'super-alliance' with the National Alliance of Kenya (NAK), with Mwai Kibaki as the president of the party. On 21 October 2002, two months before the general election, the parties officially merged to form the National Rainbow Coalition (NARC), largely comprised of old KANU political legends and

¹ A relatively high number of disturbances of public gatherings was recorded between May and August 2002 by the Central Depository Unit, a non-governmental organisation set up to monitor cases of electoral violence in the period preceding and after the 2002 elections – the police were said to be responsible for 10 of the 13 recorded cases during this period.

representing an official opposition to KANU. The existence and the subsequent electoral victory of NARC has been ascribed to political miscalculation on the part of Moi and the skilful tactics of Raila Odinga. In a preview of Kenya's 2002 national elections, the Center for Strategic and International Studies (CSIS) argued that:

President Moi grossly underestimated Odinga's genius as a political tactician. Were it not for Odinga, most of the KANU old-guard would have reluctantly accepted Uhuru Kenyatta's imposition, most would have never have walked out of KANU, and virtually none would have endorsed Kibaki as their leader and presidential candidate.

CSIS 2002.

As argued by Mike Cowen and Lisa Laakso (1997), elections in Africa raise issues that are not new. They are the problems of political domination and regime legitimacy, the articulation between the local and national levels of politics, and the perennial problem of the lack of institutionalisation of legal procedures and techniques imported from Europe and elsewhere in the world. The 2002 general elections raised issues that reached beyond mere personality and ethnic politics³ to include open political contestation and participation based on ideological disputation between political parties. For the first time in the history of elections in Kenya we witnessed family members competing against each other on different political party platforms for constituency seats. For example, in the Eldoret North constituency, two political heavyweights from the Kalenjin ethnic group fought on different party platforms. This is characteristic of the political environment and the changed nature of political competition and participation along ethnic lines to a more complex political dynamic where both KANU and NARC represent a wide spectrum of political interests and ethnically diverse coalitions, fiercely competing for votes across and within different constituencies. In previous elections (1992 and 1997), voting patterns were largely depicted along ethnic lines (Haugerud 1995; Hornsby & Throup 1992; Rule 2000). It would have been possible to predict accurately, given the ethnic composition of the various contestants, that most Kikuyu would have voted for Kibaki and DP; the Abaluhya would have voted for Wamalwa and FORD-Kenya; the Kamba would have voted for Charity Ngilu and the SDP; the Luo would give their votes to Raila Odinga and the NDP; and KANU would have had an absolute electoral majority in areas dominated by the Kalenjin in the Rift Valley and by the Somali, Boran, Turkana, Samburu and Maasai in the semi-arid frontier zones and the rural Coast Province. But the Coast Province formerly dominated by KANU fell to NARC. The opposition party secured all four seats in Mombasa and gained a considerable number of seats in the rural hinterland,

³ The ethnic community in Kenya is composed of: Kikuyu (21%), Luhya (14%), Luo (12%), Kalenjin (11%), Kamba (11%), Kisii (6%), Meru (5%), Mijikenda (4%). (Republic of Kenya, 1989 Census. Donor Information Center of Elections in Kenya.)

winning all the seats in Kilifi, Malindi, and Kwale Districts. KANU only managed to capture seats in Tana River and Lamu Districts and very narrowly in Taita-Tavveta. Even the political heavyweights within KANU who came from this province failed miserably – Cabinet Minister Noah Katana Ngala, and Shariff Nassir were among those who lost their seats to NARC. As a result, KANU seats in this province were reduced from 18 to 7 out of 21 seats, with NARC moving from 2 to 11 seats – a complete transformation of the political landscape in Coast Province.

The political significance of NARC's victory lies in the united front put together by the opposition parties as a critical challenge to the formidable influence of KANU in Kenyan politics. Kibaki beat Uhuru Kenyatta by 61.3% to 31.6% of the popular vote, while FORD-People's Simeon Nyachae captured 6.5% of the presidential vote, and James Orengo of the Social Democratic Party (SDP) secured 0.4% and Waweru Ng'ethe of Chama cha Umma only 0.2%. Kibaki was able to secure 25% of the votes in five provinces by reaching the 25% target in all eight provinces.

THE CHARACTERISTICS OF K-DOP

K-DOP's participation in the elections was not premised on a demonstrable condition for free and fair elections but rather on the need to ensure that the elections took place within an environment of substantial freedom and fairness so all parties and individuals could compete on a more level playing field. On 27 December 2002, K-DOP deployed 20 000 election observers, including 64 regional observers who were deployed in late October and 630 constituency observers, deployed on 15 November. These long-term observers were complemented by 18 500 short-term observers on the polling day. Overall K-DOP was able to process 17 756 observation reports of polling stations on election day. A number of international countries/agencies provided the 2.5-million Euros worth of funding for K-DOP. The lead donor was the Department for International Development (DFID), which also provided the technical adviser (Mr Simon Osborn). Other significant contributions came from the Netherlands, Austria, Denmark, Finland, Sweden, USAID, Canada, and the United Nations Development Programme UNDP.

K-DOP is comprised of competent, conscientious people with credible credentials, representing different sectors of the society – religious, ethnic, class and racial. The leadership includes eminent and respected community leaders who bring integrity and loyalty to the development of democracy in Kenya. The K-DOP strategic board, comprising six representatives from each participating organisation or agency, was responsible for providing the overall strategic direction of the programme; issuing regular monthly statements about the election process and the political environment; and releasing the final report of the observation.

Each strategic board member is given a portfolio. The representative of the National Council of Churches of Kenya (NCCCK) was given the technical portfolio, which provides a forum for the discussion and agreement of technical issues such as developing training kits and curricula for observers, drafting the national

deployment plan, the code of conduct for K-DOP observers, programme timetable, terms of reference for the field personnel and observers to be recruited, the poll watchers' manual and the observation report forms. The Institute for Education in Democracy (IED) and the Media Institute were responsible for media coverage, legal issues, conflict management and resolution (national level election disputes) and liaison (with the Electoral Commission of Kenya and other national stakeholders); the faith-based organisations (Muslim, Christian and Hindu) were collectively responsible for recruiting, training, coordinating and supervising observer deployment across the country. It is worth noting that this was the first time in the national history of Kenya that the three major religions in the country worked together – the national significance of this collaboration should not be underestimated in a country which has often been at the receiving end of religious fundamentalist attacks. This cooperation saw the level of electoral violence reduced significantly compared to that during the 1992 and 1997 general elections. Electoral violence and conflict in 2002 were localised within constituencies rather than ethnic in nature and resulted largely from personality clashes between candidates who came from the same constituency but represented different parties.

By comparison with other domestic observations (Akatsa-Bukachi 2001), the role played by K-DOP during the elections is best described as extensive, intensive, and systematic. It gave citizens greater opportunity to participate in and own the process. K-DOP deployed approximately 20 000 citizens as poll watchers across the eight provinces, 70 districts, 210 constituencies and 2 112 wards – covered every polling station⁴ and polling stream available, and participated at every level of the electoral process – from registration of voters and candidates, through the campaign, the voting and the count, the public declaration of results, and the instalment in office of Members of Parliament and the President. The K-DOP observer team comprised both long-term and short-term observers. Long-term observers (LTOs) covered all the pre-election activities with the object of gaining an in-depth knowledge of the various phases of the election process. Short-term observers (STOs) were responsible for the closing days of the campaign, election-day activities and the immediate post-election period. All the observers provided the necessary visibility and countrywide coverage of the elections. On election day observers were expected to complete a well detailed poll watchers' report form covering the opening of polling stations, observation of voting environment (ie, violence, bribery, intimidation and campaigning), procedures and closure of polls. The constituency observers (COs) were responsible for ensuring that STO reports reached the regional coordinator, who transported the forms to the K-DOP national office in Nairobi where they were entered in the database by a data entry team and then analysed. From these data K-DOP produced statistical information about its operation.

⁴ There are 18 367 polling stations and polling streams scattered all over Kenya. In some polling stations there is more than one polling stream at the polling station – each stream/station has a maximum of 1 000 voters.

The body's press release described the elections as free, fair and demonstrating the determination and will of Kenyans to choose their leaders with great maturity and tolerance. For this to be possible, the rules of the game must be such that they allow all political parties to organise and mobilise supporters across the country and have access to the ballot, the media and funding for political activities. It also means that all political parties must be involved in developing rules of fairness for determining the eligibility of voters;⁵ procedures must be adopted for identifying and certifying those eligible; and methods of counting the vote must be agreed upon. A system of internal monitoring of the polls must be established by all political parties and put in place. The main areas in which local observation had practical and technical impact in Kenya involve election and registration rules, nomination and campaign process, election logistics, electoral disputes, monitoring and post-election transition.

STRATEGIES EMPLOYED BY K-DOP IN OBSERVING THE ELECTORAL PROCESS

Widespread observation of all contests

K-DOP contributed to creating an environment in which all competing political parties were able to campaign and present their agendas to the electorate. It was also able to scrutinise the election rules to see whether they afforded an atmosphere of open debate and widespread participation without intimidation. The organisation worked closely with the Electoral Commission of Kenya (ECK) and participated in working groups organised by the ECK in an effort to improve internal ECK management and strengthen ECK's capacity as well as to evaluate the implementation of the rules, for example, the nomination processes of political parties, voter registration, prevention of fraud, and ballot secrecy.

K-DOP participated in observation of the nomination of presidential, parliamentary, and civic candidates across the country. The presidential nomination took place on 18 and 19 November 2002. Of the 52 registered political parties only eight submitted candidates for the presidency and the ECK only accepted five of these as valid: Uhuru Kenyatta (KANU), Mwai Kibaki (NARC), Simeon Nyachae (Ford-P), James Orengo (SDP), and David Waweru Ng'ethe (Chama cha Uma).

K-DOP also observed the nomination of parliamentary candidates held on 25 and 26 November 2002. Eventually, 34 parties fielded candidates for the parliamentary elections.⁶ According to information released by the ECK, a total of

⁵ In the context of Kenya's 2002 general elections, an eligible voter was a voter with: a 2002 voter's card; a national identity card or passport; his or her name had to appear on the 2002 voters' register; and his or her voter's card should not be embossed (Kivuitu 2001).

⁶ Fifty-two political parties were registered under the Societies Act. On 29 November 2002, the ECK published a list of 38 parties presenting candidates for parliamentary election. On 2 January 2002, the ECK issued another list. This one included the names of only 34 parties, those excluded being the Alliance Party of Kenya, United Kenya Citizen Party, People's Democratic Union of Kenya and Ford-Kenya.

1 035 parliamentary aspirants contested 210 seats in the National Assembly. Of these, 44 were women (nine of whom were elected). Kangundo constituency in Machakos District fielded the highest number of candidates (13) in the country for a parliamentary seat. KANU fielded parliamentary candidates in 209 and NARC in 207 of the 210 constituencies. Ford-P fielded 185, SDP 96, Safina 59, FORD-Asili 41, Kenya People's Party 23, the National Alliance Party 19, the National Labour Party and the Shirikisho Party of Kenya 17, the Kenya African Democratic Development Union 16, the Federal Party of Kenya 14, National Progressive Party 12, Chama cha Uma and Sisi Kwa Sisi 11, the Kenya Social Congress, the Kenya National Congress and the United Agri Party 10, the Kenya Patriotic Trust Party 9, the People Party of Kenya 7, the Labour Party of Kenya 6, the United Democrats of Peace and Integrity in Kenya and the United Patriotic Party of Kenya 5, the Green Party of Kenya, the Economic Independence Party, the Kenya National Democratic Alliance and the Kenya Citizens Congress 4, Chama cha Majimbo na Mwangaza, the Republic Reformation Party-Kenya, the Umma Patriotic Party of Kenya and the Mass Party of Kenya 3, the Republic Party of Kenya 2, the Democratic Assistance Party and the People's Solidarity Union of Kenya 1.

K-DOP further observed the civic nominations, which took place on the same days as the parliamentary nominations (25 and 26 November 2002). According to information published by the ECK, 41 political parties fielded civic candidates. A total of 7 009 candidates (including 381 women) were nominated for the 2 128 elected civic seats. There is no detailed breakdown by party of nominations for the civic elections.

The parliamentary and civic nomination process was, at times, rather chaotic and uncoordinated and there were reported cases of candidates who had lost the primaries but were nevertheless nominated by their respective political parties. It was observed that between the closure of nominations and the publication of the list, the ECK allowed certain parties to replace duly nominated candidates with others. Apparently, the ECK took a practical – instead of a strictly legal – approach to the problems that occurred with regard to the nominations process, such as double nominations and replacement or withdrawal of candidates after the closure of nominations.

During the nomination process a number of parties were disorganised and in crisis because candidates could agree neither on the methods to be used for voting nor on the results. There were widespread allegations of candidates holding certificates with the signatures of the authorised party signatories forged. In some instances, the NARC presented double nominations in some constituencies, while some candidates were given nomination certificates by party leaders without the party's nomination elections having been held. NARC's parliamentary and civic candidates were reported to have been selected rather than elected in an open competitive primary election. KANU's nomination process appears to have consisted of a coronation of candidates from the top rather than an election. In at least twelve constituencies, among them Nairobi, Eldoret East and Kuresoi, KANU

primaries had to be rerun. Some parties, including one faction of the SDP, that had signed the NAK memorandum of understanding nevertheless fielded candidates for other parties, among them the Federal Party of Kenya, Labour Party of Kenya and KENDA. Ford-Kenya withdrew two candidates whom the party had nominated.

Other reported incidents included the withdrawal of some duly nominated candidates after the closure of nominations. Although the law does not provide for this situation (one can only withdraw until the closure of nominations) these withdrawals were accepted by the ECK and the names of the nominated candidates did not appear on the final list of candidates. Gideon Moi, a son of President Moi, 'inherited' his father's Baringo Central seat unopposed. This followed a series of seemingly well-coordinated withdrawals by nominated parliamentary candidates who were contesting the seat. On 28 November 2002, Amos Kandie of Safina left his party to join KANU and vowed to support Moi. It is still unclear when exactly Thomas Letangule of NARC withdrew from the race, but it was at some time between 26 November and 1 December 2002. Messrs Kandie and Letangule had been cleared to vie for the seat by their respective parties but withdrew from the race at the constituency level before the returning officer. Hence, by the time the nomination papers were sent to the ECK headquarters their applications for withdrawal had already been allowed. By 1 December 2002, apart from Gideon Moi, only Isaac Cherutich Kibet of Ford-P was still in the race and his was the only name other than that of Moi to appear on the preliminary list of parliamentary candidates published by the ECK on 29 November 2002. In a letter sent to the ECK chairman, a Mr Kivuitu, on 1 December 2002, Kibet wrote that he had withdrawn his candidature. A press statement by the ECK, dated 4 December 2002, confirmed that the ECK had received an application from Kibet for withdrawal of his candidature, which it had considered and allowed. As a consequence, on 4 December 2002 Gideon Kipsiele Moi was gazetted as an elected member of the National Assembly. On the same day, the ECK issued a press release stating that no withdrawals would be accepted after 3 December.

After nominations closed, the ECK accepted the replacement and removal by certain parties of their duly nominated candidates, although the law does not provide for this option. In the press statement mentioned above, the ECK announced that, in response to appeals from candidates and/or political parties, it had reviewed certain decisions taken by the returning officers during the formal nomination period. In Kamukunji constituency KANU was allowed to substitute Simon Ngang'a Mbugua for Ahmed Ali Seifudin Abdi while NARC was allowed to substitute Francis Mutwol, Peter K Bett and Herman O Omamba Keino for B Kipchumba (Marakwet west), Ngeny R Kipngetich (Konoin) and Ocholla G Ochieng' (Uriri). NARC and Safina were allowed to nominate candidates in some constituencies where they did not have them. NARC nominated Benjamin N Oonge (Bobasi) while Safina nominated Kassim A Choka for Msambweni constituency. The Ford-K candidates, S Murunga (Kimilili) and F Wanyonyi (Kwanza), who had been

nominated, were removed after an application by their nominating party. Ford-K is one of the parties under the NARC umbrella. The chairman of the ECK had to cope with these issues and announced that returning officers would accept any written proof that candidates belonged to a political party. At the same time the returning officers had to be extra cautious about not declaring candidates validly nominated unless the circumstances warranted such a declaration. The ECK began the formal clearance of parliamentary and civic candidates on 27 November 2002 and gazetted the candidates on 4 December 2002. Thus, it appears, the 'practical' deadline for the nomination of candidates was 3 December 2002.

Helping with logistical problems

Holding three elections (presidential, parliamentary and civic⁷) simultaneously requires an enormous amount of resources and infrastructure. The voting took place in 14 750 polling centres with a total of 18 366 polling stations. Each polling station caters for a maximum of 1 000 voters. K-DOP observation on election day indicated that the process was marred by minor logistical problems such as polling stations opening late and bad weather (heavy rain and floods). It was reported that approximately one-third of the polling stations opened late because of a delay in the delivery of election stationery. In isolated cases voting was postponed (eg, in Tana River, Turkana and Samburu) because of logistical problem and civic elections were postponed to 13 March 2003 in 12 wards because of improperly printed ballot papers and the death of candidates. Other logistical problems included voters' register inaccuracy, lack of secrecy, and misplaced colour codes on ballot boxes.

Each polling centre was manned by one presiding officer and one deputy presiding officer and each polling station had six polling clerks, armed security personnel, party agents and a domestic observer. The effort to place at least one observer in each station facilitated voter participation and a general atmosphere of peace, which contributed to a well organised and efficient poll.

It was reported, mainly in Nairobi, Mombasa and a few locations in rural areas, that people's names were missing from the voters' register. Presiding officers and deputy presiding officers were often found to be inconsistent in applying ECK instructions about how to deal with missing names. This led to confusion and inequitable treatment of a number of voters. The inconsistent application of ECK instructions was partly attributed to the fact that the ECK published contradictory instructions on this subject just before the elections.⁸ In Langata constituency, Raila

⁷ Four candidates contested the presidential election and thirty-four parties fielded 1 032 candidates for the 210 parliamentary seats.

⁸ The law allows people who present a valid identity document or passport and a valid voter's card but who are not on the register to vote, if the presiding officer is satisfied that the person's name was unjustifiably omitted from the register. On 17 December 2002 the ECK instructed its election officer to check such people's name against the so-called black books – handwritten registers from which the final voters' register was derived. In a consultative meeting with political parties on 24 December 2002, the ECK changed this position and ordered its officers not to use the black book.

Odinga (NARC) claimed that names beginning with certain letters (M and O) were missing from the voters' register. Unfortunately, no evidence was found to substantiate the claim that irregularities were specifically directed at any political or ethnic group.

The observer group reported that the secrecy of the vote was undermined on numerous occasions across the country. The phenomenon was more prevalent in rural areas where illiterate voters were assisted in a manner that failed to respect the secrecy of their votes. It was reported that presiding officers instructed voters to proclaim loudly the candidate of their choice, after which the party agent of the corresponding party would follow the voter to the polling booth to assist him/her in making a cross in the appropriate box.

Also mainly in rural areas it was found that clan or family voting was widely practised. In a number of cases the quality of the material used to construct the polling booths did not allow for sufficient privacy and in others voters had to mark their ballots on the windowsill because of poor light in the early hours of the morning.

The colour coding on the ballot boxes distinguishing the three different elections was not always distinct, leaving voters confused about which box was designated for which election. This confusion led to voters casting their ballots in the incorrect box. Colour coding on two sides of the ballot boxes might have eliminated this problem.

Helping resolve electoral disputes

K-DOP's role in conflict resolution was intended to give further legitimacy to the electoral process but it could in no way seek to address the underlying causes of such conflicts as surfaced during the election period. If one or more of the parties was unwilling to accept the outcome of the election and resorted to armed struggle, there would have been little the observation programme could have done to prevent such a response. K-DOP acted as complaint investigator, fact finder, intervener, referee and deterrent to conflict and manipulation of the election. Its officers investigated cases of electoral fraud, intimidation and violence.

In general, they found evidence of election related violence, misuse of state resources for political purpose, and voter bribery. Generally, K-DOP worked with the ECK and with all political parties to produce agreements intended to eliminate campaign violence. It was reported that political parties and their candidates actively and freely campaigned throughout the country and that no campaigning took place on election day.

Monitoring the voters' roll

The Constitution of Kenya stipulates that a citizen who has attained the age of 18 years (evidenced either by an identity card or a Kenyan passport) and has been an

ordinary resident in Kenya for a certain period can register to vote.⁹ A registered person is any person whose name appears in the principal register and is thus entitled to vote in an election conducted under the National Assembly and Presidential Election Act. A person adjudged bankrupt, or of unsound mind, or detained in lawful custody, or convicted of an election offence may not be registered as a voter. The figure provided by the ECK of the total number of registered voters for the 2002 elections was 10 451 150. This figure represents an estimate of about 70% of the total eligible voter population.¹⁰

K-DOP raised the concern that in some constituencies thousands of voters' names were missing from the register. In the February 2002 voters' register update, the Institute for Education in Democracy, a member of K-DOP, conducted a survey of voters registered in 19 of the 210 constituencies between July and August 2002. They found that the registration had been carried out in 'a manner that most of the respondents found satisfactory'. However, errors were detected on the register, ranging from misspelled names to the failure to update the register to take into account deceased voters.¹¹ They calculated that perhaps 1 million people on the register (representing the approximately 2% of Kenyans who die each year) were, in fact, dead. So, in the five years since the 1997 elections roughly 10% of those who had registered for those elections would have died. In rural constituencies, however, less than 0.4% of the names on the register were removed because of death.

The ECK confirmed these findings. The main causes appear to be: that the Department of Civil Registration is not computerised and often relies on the provincial administration (chiefs and assistant chiefs at the location and sub-location level) to supply the department with information about deaths; the poor quality of the registration exercise in some areas of the country, where voters' names were misspelled or not written in the correct order; double registration (approximately 60 000) of eligible voters and a failure to provide those who had attained the voting age with the necessary identification documents for registration and receipt of a voter's card. The extent of its impact and potential bearing on the overall quality of the election process, it was suggested, does not impinge in any meaningful way on what the elections represent for the citizens of Kenya – democracy as a preferred method of effective political change in Kenya's polity and a reflection of a democratic will.

9 One must have been a resident in Kenya either (i) for a period of not less than one year immediately preceding registration; or (ii) for a period of, or periods amounting to, not less than four years in the eight years preceding registration; or (iii) one must have for a period of – in aggregate – not less than five months in the twelve months preceding registration – been ordinarily resident in the constituency in which one applies to be registered; or (iv) for such a period have carried on business there or have been lawfully employed or lawfully possessed land or buildings for that period (s 43 of the Kenyan Constitution).

10 The figure is based on the 1999 Population and Housing Census done by the Central Bureau of Statistics: the total population was 28 686 607, of whom 14 023 352 were older than 18 years.

11 *Registration of Voters in 2002, an Audit*. Institute for Education in Democracy.

Monitoring the media

The Kenya Broadcasting Corporation (KBC) is the official and state-owned public broadcaster in Kenya. It was established by the Kenya Broadcasting Corporation Act, chapter 221 of 1990 (which was amended in 1997). The corporation operates five radio channels and one television channel. In addition, there are three commercial radio stations and one commercial TV station.¹² The KBC is also a shareholder in the Digital Satellite Provider, Multichoice. KBC radio broadcasts in English and Kiswahili and the TV channel covers over 95% of Kenya's population. Moreover, the KBC has three regional broadcasts in fifteen languages. The regional broadcasts are disseminated as follows: Central Broadcast – Kikuyu, Kikamba, Kimasaai, Kimeru and Kiambu languages; Eastern Broadcast – Somali, Boran, Rendile, Burji and Turkana languages; and Western Broadcast – Luo, Kisii, Kalenjin, Kuria and Teso languages.

K-DOP provided systematic media monitoring coverage of the whole electoral process. This revealed that the KBC's coverage of political events consistently maintained a bias toward KANU – on election day 75% of the total airtime allocated to political news by KBC TV and 80% of the total airtime allocated to political news by KBC radio was given to KANU. The media monitoring project also reported that the little coverage that was given to other political parties by the state broadcasting agencies was largely negative.

Monitoring the voting process

The major activity of election observation teams is to oversee the election as it unfolds. The observers evaluate whether election rules are implemented according to the electoral law, without fear or favour. They also evaluate the quality and effectiveness of voter education. On election day most of the K-DOP poll watchers arrived at the polling station at 05h15 and observed the whole voting and counting process, which proceeded, in many instances, into the early hours of the morning. In general, the voter turnout was reported to be 57.2% of the 10.5 million registered voters (of whom 4.83 million are women and 5.65 million are men). The lowest turnout rate was recorded in the urban centres – Nairobi (42%) and Coastal Province (42%), while the Central Province recorded the highest turnout rate (66%). In comparison with other elections on the continent the voter turnout was quite low. However, if the estimated number of more than 1 000 000 dead persons on the voters' register is correct, a more accurate figure would be 63%, so the low poll need not be over emphasised. Although K-DOP observers encountered widely scattered voting problems such as isolated incidence of violence and intimidation,

12 The radio stations are: Metro FM (covering mostly Nairobi, Mombasa, Kisumu, Nakuru, Nyeri and Eldoret); Coro FM (spreads through to Nairobi, and Mount Kenya regions); and Pwani (located in the Coastal region). The TV station is Metro TV, which covers an 85km radius from Limuru.

mostly in Nyanza and North Eastern Province and mainly attributed to clashes between supporters of opposing political parties, they evaluated the balloting process overall as having no serious flaws that might have affected the outcome of the elections.

Monitoring the counting and tallying process

All K-DOP observers remained at polling stations to watch the votes being counted and recorded. Counting began immediately after the last ballot was cast. The presiding officer, accompanied by all the electoral clerks, party agents, and K-DOP observers, transported the ballot boxes to the constituency counting centre, where the result was tallied and announced in the presence of all witnesses. In a number of cases heavy rainfall delayed the counting process. In Turkana Province, 22 polling stations were isolated by appalling weather conditions and, after three days, the election team had to be evacuated by helicopter.

CONCLUSION

This paper demonstrates that K-DOP played a legitimising role through its systematic and in-depth observation of the electoral process within a context characterised by political stalemate and a dire need for regime change. The diverse civil society agencies that came together to form K-DOP and, especially, the involvement of the three major religious groups in the organisation, give further legitimacy both to K-DOP and to the electoral process, enabling K-DOP to transcend ethnic and religious bigotry and conduct its observer role with a generally acceptable degree of neutrality and impartiality.

K-DOP successfully facilitated an environment in which voters could participate freely and exercise their right to elect their leaders. K-DOP was able to unite the entire country around a common national purpose. In almost every polling station the voters were given a sense that their vote counted. They demonstrated clearly that elections are not only the domain of electoral commissions and political parties; that citizens, if given ownership of the electoral process, will ensure and protect the integrity and legitimacy of the process.

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