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Item Type	Preprint
Authors	Schulz-Herzenberg, Collette;Aling'o, Peter;Gatimu, Sebastian
Publisher	Institute for Security Studies (ISS)
Rights	With permission of the license/copyright holder
Download date	2026-09-15 09:07:52
Link to Item	http://hdl.handle.net/20.500.12424/224658

The 2013 general elections in Kenya

The integrity of the electoral process

Collette Schulz-Herzenberg, Peter Aling'o and Sebastian Gatimu

Recommendations

- 1** Kenya's Independent Electoral and Boundaries Commission (IEBC) should emphasise its role as an independent, non-partisan electoral management body.
- 2** The IEBC should refrain from the defensive approach of the 2013 elections and could use upcoming by-elections and calls for referenda to showcase a revised approach.
- 3** The IEBC should expand voter registration among ethnic groups that perceive themselves as politically marginalised.
- 4** Institutions that provide election-related information should be non-partisan, transparent and accountable and adopt a pro-active and rights-based approach.
- 5** Election observers should ensure their work remains relevant and resonates with the will of the people.

Summary

The Comparative National Elections Project (CNEP) post-election survey was held in Kenya following the 2013 general elections. Its primary objective was to generate data that could provide insights into the views and attitudes of Kenyan voters towards their political institutions and the 2013 general elections in particular. This policy brief forms one of a series and focuses on the integrity of the 2013 electoral process. Its purpose is to make findings and provide recommendations that can assist Kenya's electoral management body, political parties, media, civil society organisations and citizens of Kenya to improve integrity and public confidence in electoral processes and election outcomes.

ON 4 MARCH 2013 Kenyans voted in the fifth multi-party elections since the restoration of multi-party democracy in 1991. These elections were the first to be conducted under a new legal framework, defined by a new constitution (adopted by Kenyans through a national referendum in August 2010) and under the management of a new electoral management body, the Independent Electoral and Boundaries Commission (IEBC). It was also the first elections to follow the deeply flawed 2007 general elections, which left more than 1 000 people dead and more than 600 000 internally displaced.

Context of the 2013 elections

Even though eight presidential candidates ran for the 2013 general elections, the race was ultimately narrowed down to two presidential candidates, Raila Odinga and Uhuru Kenyatta and their respective party coalitions, CORD and Jubilee Alliance, who fiercely contested the election. The IEBC's official results showed a narrow margin of victory for Kenyatta (Jubilee) with 50.07% of the vote share, while Odinga (CORD) garnered 43.31%; the winning mark for presidential elections as per the new constitution is 50% plus one of the total votes. Allegations of vote rigging and other malpractices

led the losing coalition, CORD, to lodge a complaint with the Supreme Court of Kenya. Nevertheless, the court unanimously ruled in favour of the original outcome, thus endorsing Kenyatta as the president elect. Although the court's verdict was not satisfactory to many Kenyans, including Odinga and some civil society groups, they agreed to respect and abide by the verdict, thus helping to avert potential conflict.¹ Most international and domestic observer groups indicated in their reports that the elections were credible, free and fair, despite some irregularities. Voter participation in the elections was notably high, with an 85% voter turnout.

Election management

Trust in the IEBC

Electoral integrity depends on the character of governance leading up to an election, the quality of the process on the day, as well as mediated efforts to manage conflicts over contested processes and outcomes. Following the 2007 elections, the commission of inquiry into the conduct of the 2007 general elections (the Kriegler Commission)² recommended the establishment of a new electoral management body as a measure to bolster the credibility of elections and ensure peaceful elections. The IEBC's predecessor, the Electoral Commission of Kenya (ECK) was considered to be a body that was biased towards the interests of the 2007 incumbent, President Mwai Kibaki, and this partisanship was widely regarded as an underlying cause of the 2007/8 post election conflict.

Most international and domestic observer groups indicated in their reports that the elections were credible, free and fair, despite some irregularities

Prior to conducting its first general elections, the IEBC was under intense public and international scrutiny, probably more so than any other Kenyan political institution. To establish public trust and confidence, the IEBC needed to not only ensure logistical and technical arrangements but also demonstrate impartiality and efficiency in registration and voting processes for the 2013 general elections.³

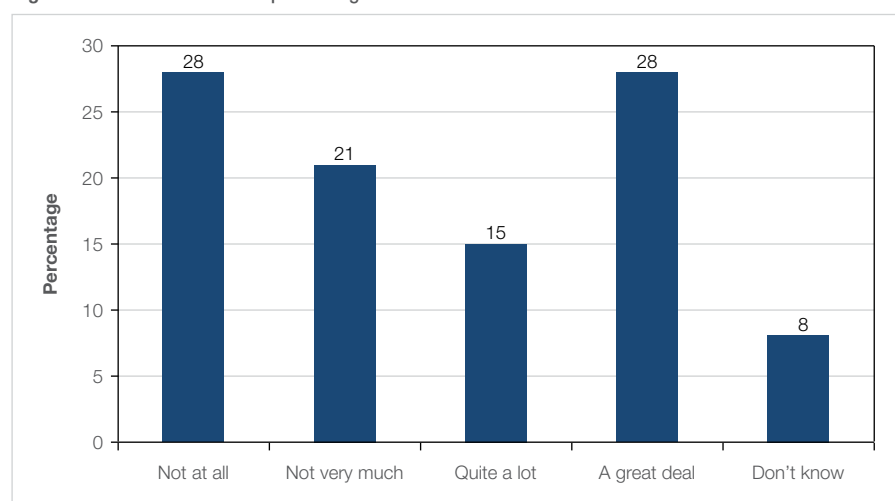
From a procedural perspective, the 2013 elections were the most complex in Kenya's history. On the day, voters were required to cast six ballots in simultaneous elections for candidates at the national and local devolved levels. To this end, Kenya largely met its obligations in the conduct of polling and counting operations. Despite some technical difficulties with the implementation of new electronic voter identification and electronic results transmission technology, the IEBC employed recognised best practice voting and counting procedures to enable Kenyans to vote and to tally millions of votes cast for the president, national assembly, senate, women representatives, county governors and members of county assemblies.

Thanks to the open and competitive manner in which the IEBC commissioners were appointed at the outset, the body was rated highly and enjoyed a high level of confidence.⁴ Subsequently, Kenyans came to expect even more of the IEBC. The IEBC's immediate predecessor, the Interim Independent Electoral Commission (IIEC) had done commendable work in managing the by-elections resulting from the 2007 elections and the 2010 national referendum and successfully introduced new election technology. The fact that the IEBC inherited some commissioners, including the

85%

OF VOTERS PARTICIPATED IN
THE ELECTIONS – A NOTABLY
HIGH TURNOUT

Figure 1: Trust in the IEBC in percentages



Source: CNEP Kenya Survey, 2013

chairperson and the secretariat from the IIEC, also generated very high expectations and a sense of confidence and trust among citizens.⁵

However, the scenario seemed to change in the period running up to the 2013 elections. Data suggests that the IEBC faced a difficult task establishing widespread public confidence during this time. First, the IEBC did not have a track record managing general elections, let alone anything of the magnitude expected during the 2013 elections. Secondly, the independence and leadership of the IEBC came into question, as the IEBC itself appeared to waver on a number of critical decisions such as the date of the elections, the constituency boundary delimitation exercise, procurement of biometric voter registration (BVR) kits, and registration of diaspora voters. With regard to the date of elections and boundary delimitation, the IEBC seemed to have simply sat back and sought the cushion of the court, while regarding BVR kits procurement and diaspora voter registration, the IEBC seemed to have followed directions from the executive. These incidents, among others, led to distrust. It is therefore not surprising that when asked, *'How much do you trust the Independent Electoral and Boundaries Commission (IEBC)?'*, almost half of all respondents (49%) said they did not, while 43% responded positively, and 7% had not heard enough to respond (Figure 1). The relatively low levels of trust in the new electoral body suggest that its public image requires attention.

Voter registration

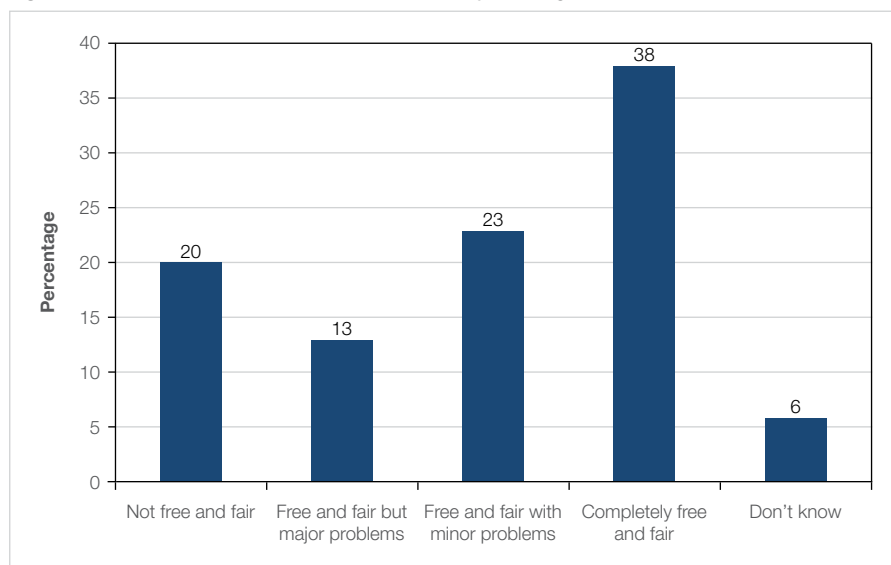
Voter registration is the cornerstone of an electoral democracy. An inclusive and transparent registration process allows for the broad participation of all eligible voters, which lends credibility to the electoral process and election results. The new Kenyan constitution establishes highly inclusive criteria to the right to vote. There is consensus that the IEBC largely met its obligations in establishing an accurate, inclusive and credible voter register, with 14,3 million voters registered to vote in the 2013 elections with the use of BVR technology.⁶

Nevertheless, it is estimated that approximately three million Kenyan citizens did not have the national identity card required by the Elections Act to register and vote in the elections. Voter register figures revealed low rates of registration in several regions of the country and particularly among marginalised communities. The European Union election observation press release issued on 6 March 2013 indicated that, '[S]ome

14,3
Million

VOTERS WERE REGISTERED TO
PARTICIPATE IN THE 2013 ELECTIONS
WITH THE USE OF BVR TECHNOLOGY

Figure 2: Freeness and fairness of 2013 elections in percentages



Source: CNEP Kenya Survey, 2013

Kenyan communities and marginalised groups remain disenfranchised as a result of not having national ID cards. More than three million eligible voters were not registered during the biometric voter registration process and were therefore unable to vote in these elections.¹⁷

Delays in the initiation of the voter registration process (as a result of the BVR equipment procurement challenges) also meant that the IEBC was only able to provide a short timespan of 30 days for registration. When CNEP asked Kenyans if they, or someone they knew, were prevented from voting because their name was not on the voter list or because they were prevented from registering, a vast majority (81%) of the respondents stated this was not the case; 16% of voters interviewed stated that they had had this experience, and 3% did not know.

Free and fair elections?

Citizen perceptions about the freeness and fairness of elections are crucial to democratic legitimacy.⁸ Although Kenyans were circumspect about the IEBC, most believed that the 2013 elections were free and fair. When asked, *'On the whole, how would you rate the freeness and fairness of the most recent national election?'*, over a third (38%) felt it was completely free and fair; almost one in four people (23%) thought it was free and fair with minor problems; 13% thought it was free and fair but with major problems; while one in five respondents (20%) thought the elections were not free (Figure 2). That more than 61% of Kenyans rated the conduct of the elections favourably, and felt them to be free and fair, reflects a positive performance by the IEBC and provides a constructive platform upon which to address low levels of institutional trust. The data shows a significant association between levels of education and ratings of the election, with more educated voters less likely to give the 2013 elections a positive rating.⁹ Age and gender make little difference – equal proportions of ratings were found across these groups.

OF KENYANS BELIEVED THE 2013 ELECTIONS WERE FREE AND FAIR

Voters who rated the 2013 elections as free and fair were also likely to trust the IEBC.¹⁰ Cross tabulations show the proportion of people who rated the elections as 'unfree and unfair' among those who mistrust the IEBC is 53%, compared to 3% among those who trust it. Conversely, the proportion of people who rated the elections

positively as 'completely free and fair' among those who do not trust the IEBC is 10%, compared to 75% who trust it.

From a different perspective, people who rated the elections poorly were also very likely to mistrust the IEBC (75%).

Ethnic dynamics are reflected in the ratings of the 2013 elections as free and fair. Positive ratings are highest among the ethnic groups that supported the Jubilee Coalition, especially the Kikuyu and the Kalenjin voters, with 87% and 96% of respondents respectively deeming it free and fair. On the other hand, the majority of ethnic groups that supported CORD, especially the Luo and the Kamba, deemed the elections as neither free nor fair. In this category of voters, those reporting the elections as free and fair, namely the Luo (19%) and the Kamba (44%), were in the minority.¹¹ Interestingly, in the Luhya group, 51% thought the elections were free and fair, while 38% deemed it neither free nor fair.

Counting of ballots

When asked whether they believed that votes were not counted fairly, just under a third of all respondents (30%) agreed, while a majority (57%) thought votes had been counted fairly, and 13% said they did not know. The data shows a strong and significant association between trust in the IEBC and perceptions about the fairness of ballot counting. Fifty-three percent of respondents who thought votes were not counted fairly also said they had little trust in the IEBC, while 8% of this group expressed trust in the institution.¹²

Citizen commitment to democratic and peaceful elections

The CNEP data shows that the vast majority of Kenyans are committed to the democratic principles that govern elections, such as freedom of association and political expression. When Kenyans were asked '*Would it always be acceptable, acceptable on rare occasions, or never acceptable to disrupt a party's campaign activities?*', the vast majority of respondents (87%) felt that it is never acceptable, while 10% thought disruption of campaign activities might be justified on rare occasions, and a small percentage (2%) thought it was always acceptable. CNEP data appears to indicate that even though there is a commitment to democratic principles governing elections, there is in reality a form of political balkanisation. Kenya has had a history of political zoning since the 1992 elections, which is driven by regional and ethnic-based politics. Subsequently there are certain regions where some political parties could not campaign in the run-up to and during the 2013 elections.

Experiences during the elections

The CNEP survey asked voters a battery of questions (discussed below) about their personal experiences during

the elections. Table 1 shows that no more than 17% of the electorate reported negative personal experiences, in this case relating to registration. After registration, vote buying appeared most problematic, but no more than one in eight people (12%) reported having had this experience and fewer still reported that they were prevented from participating in election events or voting through intimidation or fear.

Intimidation: Questions that gauged whether voters faced restrictions to their freedom to campaign or vote through fear or intimidation show that while voters remained highly concerned about political violence, very few directly experienced any form of intimidation when attending political events or voting. When asked if the respondent or someone whom they knew was prevented from attending an election event, like a campaign rally, by intimidation or fear, an overwhelming majority (92%) reported that they had not, while only 5% said they had, while 3% did not know. Similarly, when asked if the respondent or someone whom they knew was prevented from voting by intimidation or fear, 93% of respondents replied that they had not, while 4% said they had, and 3% did not know. Political intimidation in Kenya is a factor of political balkanisation that is driven by regional and ethnic-based politics.

Vote buying: The data shows limited evidence of vote buying where voters were offered payments or parties distributed favours. When respondents were asked if they were, '*offered a reward or compensation to vote for a specific candidate or party*', 12% said they had, while 85% said they had not, and 3% did not know.

Perceptions of electoral integrity

A different battery of questions examines broader perceptions about electoral integrity rather than direct experiences, although it is possible that some voters may have direct experience of these events. The data (Table 2) shows that negative perceptions about electoral integrity are more prevalent than tangible experiences (in Table 1). Voters appeared to form opinions about electoral integrity using information from

Table 1: Reporting negative experiences during elections (CNEP 2013)

Actual experiences	'Yes'
Prevented from attending an election event, like a campaign rally, by intimidation or fear	5%
Prevented from voting because their name was not on the voter list or because they were prevented from registering to vote	17%
Prevented from voting by intimidation or fear	4%
Offered a reward or compensation to vote for a specific candidate or party	12%

Table 2: Voter perceptions on electoral integrity (CNEP 2013)

Perceptions	'Yes'
Government resources were used to support a particular party	26%
Private resources of rich individuals or powerful groups were unfairly used to support a party	29%
Media bias in favour of a particular party	16%
Some parties' campaign activities were suppressed	20%
Votes were not counted fairly	30%

politicians and secondary sources, such as news media, as well as from personal experience.

Government abuse of public resources

The improper use of public resources provides a method for political parties, particularly incumbents, to tilt the electoral playing field in their favour. Generally, incumbent parties and their candidates enjoy certain advantages by virtue of being in government at the time of an election. Moreover, extensive targeting of state resources – including public infrastructure, budgets and state goods – for campaigning purposes creates an undue advantage over opposition parties. President Kibaki of the Party of National Unity (PNU) led a coalition government at the time of the 2013 elections. He was, however, not a candidate in the 2013 presidential elections due to constitutional limitations of two terms in office. His first term in office started in 2002 and his second in 2007.¹³

When asked if, '*government resources were used to support a particular party in 2013 elections*', the majority of respondents (58%) did not identify unfair use of government resources, while a quarter (26%) did and 16% did not know.

Perceptions of abuse of state resources appear to be shaped by whether a respondent identified with the winning or losing side in both the 2007 and 2013 elections. The CNEP survey asked respondents whom they voted for in both the current elections and the previous elections in 2007. Of those who indicated they voted for Odinga, the candidate who lost the elections, in 2007, a higher proportion (39%) reported abuse; only 14% of those who indicated they voted for Kibaki in 2007 also reported election abuse. Similarly, those who thought the Kibaki government had not unduly benefited (73%) were overwhelmingly his own supporters; only 48% of Odinga supporters thought Kibaki had not unduly benefited from being the incumbent.¹⁴

In the 2013 elections, the pattern seemed to repeat. Supporters who voted for the losing presidential candidate, Odinga, were

more likely to identify abuse of government resources (47%) than supporters of the winner, Kenyatta (12%). Similarly, most of Kenyatta's supporters (73%) believed he had not unduly benefited from the previous incumbent's use of state resources – although Kenyatta was previously linked to the PNU, backed Kibaki for re-election in 2007 and was also deputy prime minister in Kibaki's government – compared to 41% of Odinga's supporters.¹⁵

Undue influence of powerful individuals or groups

Almost a third (29%) thought that the private resources of rich individuals or powerful groups were unfairly used to support a party, while over half the respondents (55%) did not think that this was the case, and 16% said they did not know. Respondents who perceived undue influence were higher among the opposition Orange Democratic Movement (ODM) party supporters at 47% compared to the governing National Alliance (TNA) supporters at 21%.¹⁶

Suppression of campaign activities

When asked if some parties' campaign activities were suppressed, the majority (65%) thought not, while one in five (20%) responded positively, and 15% said they did not know. Party identification correlates with perceptions of campaign suppression. Higher proportions of ODM supporters (36%) suspected suppression, compared to 14% of TNA coalition supporters.¹⁷ The results are similar for the presidential vote, with Odinga's voters appearing more likely to perceive suppression of party activities.¹⁸

Perceptions of media bias

The media plays an essential communication function in any democracy and particularly during an election period.¹⁹ An independent and critical media should present high quality dialogue on party choices and policy issues, allowing voters to make informed choices and holding governing and opposition parties accountable. Media messages that contain a partisan bias are most likely to exert an influence on electoral decisions. Most Kenyan respondents (70%) did not perceive the media as biased towards any particular party in their coverage of the 2013 election. Only 16% indicated they suspected bias, and 14% said they did not know. Perceptions of media bias were somewhat affected by party affiliation, with ODM supporters only slightly more likely to perceive bias than TNA supporters.²⁰ See section on counting of ballots above.

Perception vs experience

An important question is whether voter confidence in the integrity of elections is shaped by personal experiences during the electoral process or rather by secondary information sources.

Table 3: Correlation coefficients between ‘free and fair’ rating and experiences versus perceptions

Experience	Prevented from attending election event – intimidation	–.110**
	Prevented from voting – registration	–.184**
	Prevented from voting – intimidation	–.107**
	Vote buying/ offered rewards	–.176**
Perception	Abuse of government resources	–.442**
	Influential groups	–.324**
	Suppression of campaign activities	–.347**
	Media bias	–.152**
	Unfair vote counting	–.570**
Coefficients: Spearman's rho ** Correlation is significant at the 0.01 level.		

Table 4: Correlation coefficients between IEBC trust and experiences versus perceptions

Experience	Prevented from attending election event – intimidation	–.103**
	Prevented from voting – registration	–.189**
	Prevented from voting – intimidation	–.067*
	Vote buying/ offered rewards	–.215**
Perception	Abuse of government resources	–.400**
	Influential groups	–.302**
	Suppression of campaign activities	–.306**
	Media bias	–.135**
	Unfair vote counting	–.550**
Coefficients: Spearman's rho ** Correlation is significant at the 0.01 level.		

While personal experiences do appear to have shaped people's perceptions about the quality of the elections and the trustworthiness of the IEBC, perceptions based on secondary sources seem to have been more important in shaping these attitudes.

Table 3 shows stronger coefficients between perceptions of freeness and fairness of the 2013 elections and perceptions about wider phenomena like unfair vote counting and suppression of campaign activities than individual experiences.

Similarly, Table 4 shows that people's perceptions of the trustworthiness of the IEBC also correlate more with generally held perceptions about wider phenomena as opposed to personal experiences.

Elections and satisfaction with democracy

Do Kenyans' perceptions about the integrity of the 2013 elections have any effect on their perceptions about the supply of, and satisfaction with democracy in Kenya?²¹ The CNEP data

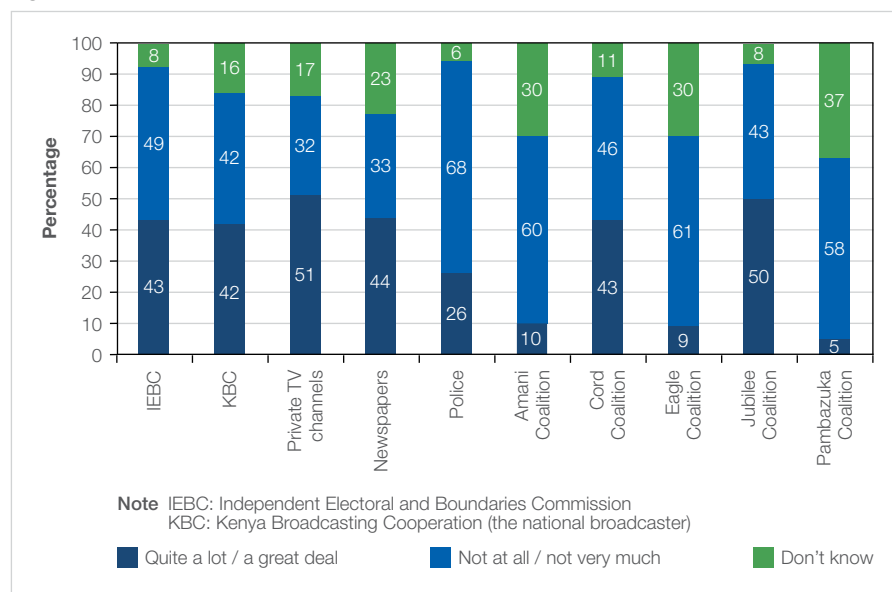
suggests that it does. Citizens were more likely to perceive the country to be more democratic and express satisfaction with the way democracy is working when they thought the elections to be free and fair and electoral institutions, such as the IEBC, to be trustworthy.²²

Trust in electoral actors

A variety of institutions play important roles at elections. Public trust in these institutions generates political support and legitimacy. Trust can be thought of as an expectation from citizens that institutions in the political system will play by fair rules and produce preferred outcomes without excessive scrutiny. Public trust is a necessary condition for political support. Citizens cannot offer support to a regime without the presence of trust. Similarly trust and support are necessary for election outcomes to be regarded as legitimate.

Figure 3 shows how those surveyed responded to questions about trust in institutions. The media appears to be most

Figure 3: Trust in institutions



Source: CNEP Kenya Survey, 2013

trusted, with private TV channels the only institution trusted by the majority of Kenyans (51%). Forty-four percent of respondents indicated they trusted newspapers and 42% the Kenya Broadcasting Corporation, yet these two institutions instilled equal measures of distrust or uncertainty. Forty-three percent of respondents indicated they trusted the IEBC.

The police service is an important peace keeping force at elections. Kenya's police service underwent some reforms, and a new leadership appears to have bolstered public confidence. The Kriegler Report identified major police failings as a factor contributing to the violence in 2007 to 2008.²³ In the months before the elections, confidence in the police remained low.²⁴ It appears that a majority of citizens (68%) remained sceptical of the police during the elections, while only one in five voters (26%) expressed trust and the rest were unsure (6%). Gaining greater levels of public confidence is critical if the police are to be regarded as a force for establishing peace at elections.

The largest party coalitions attracted levels of trust that generally reflect their party support. Uncertainty was very high for smaller coalitions such as Eagle and Pambazuka, suggesting that many voters did not know enough about these coalitions to say whether they trusted them or not. Overall, levels of trust in various electoral institutions remain fairly low. As expected, regional and ethnic bases of party coalitions also tend to shape institutional trust.



PRIVATE TELEVISION CHANNELS
WERE THE ONLY MEDIA INSTITUTION
TRUSTED BY THE MAJORITY
OF KENYANS

The role of international observers

Regarding concerns about the fairness of elections generally, Kenyans were for the most part supportive of having international election observers present, with 62% of respondents stating that a country should be willing to have observers, while 27% thought countries should not and 11% felt that they did not know enough about the issue to respond.²⁵ When asked whether they thought that Kenya benefited from having international observers to monitor elections, a 59% said they did, while almost a third (30%) rejected the idea and 11% said they did not know.

Kenyans were asked the same two questions in 2009, two years after the highly contested 2007 elections that resulted in widespread violence. At the time, 82% felt

that countries should be willing to have elections observed, while 17% felt countries should not. In addition, 85% of Kenyans felt their country would benefit from the presence of international observers, and 14% thought that it would not. Less than 1% said they did not know.²⁶

The apparent declining levels of confidence in election observers – generally and in Kenya in particular – from 2009 to 2013 can perhaps be explained by the events that transpired in the wake of the 2013 elections. The election results were extremely close for the two frontrunners; both in fact believed that they had won. Suspecting irregularities, the losing CORD, together with the Africa Centre for Open Governance (AfriCOG), appealed the election results at the Supreme Court. Citing procedural technicalities and time limits, the Supreme Court rejected the 900-page affidavit CORD submitted to support its appeal. It also rejected CORD's request for an audit of the IEBC's voting technology and AfriCOG's request for the IEBC to produce all registers that were used to identify voters at the polling stations. In the process, the original election results, and Kenyatta's election as president, were upheld, and this generated high levels of dissatisfaction and public controversy.²⁷ However, the majority of international and domestic observer reports did not seem to reflect these issues, rather indicating a free and fair election, with minor irregularities. The apparent disinclination to engage with these controversies might have led to some Kenyans losing faith in observer assessments.

Concluding remarks

As this survey shows, the Kenyan people had very high expectations of the IEBC at its establishment and also during the run-up to the 2013 elections. Yet enthusiasm seemed to wane tremendously and disappointment seemed to grow in the post-election period. Low levels of institutional trust and confidence in the IEBC suggest that its overall public image requires serious attention. It is recommended therefore that the IEBC should explore measures to enhance its public credibility.²⁸ In particular, it should emphasise, through systematic and well-structured pro-active public outreach and awareness campaigns, its role as an independent, non-partisan and non-ethnic electoral management body.

Furthermore, the defensive and reactive approach the IEBC took in dealing with the controversies surrounding the 2013 elections – which were undoubtedly problematic, as the Supreme Court ruled²⁹ – has certainly not been useful to diffuse the negative public perceptions of its credibility and integrity. Consequently, the IEBC should acknowledge the challenges experienced during the 2013 elections. It should also initiate open and reconciliatory consultations and dialogue with stakeholders and citizens on both the positive and negative

elements of the 2013 elections in order to avoid a similar situation in the future. The first step towards this end is for the IEBC to undertake an independent public audit of the management and conduct of the 2013 elections and to make the findings public. These initiatives will cast the IEBC as a transparent and accountable public body and help in rebuilding its dented public credibility and image.

The rating of the 2013 elections 'as free and fair' is significant, as it seems to indicate the trust the Kenyan public places in the IEBC. It also provides a solid platform from which to address low levels of trust and confidence in other aspects of the IEBC's performance. The survey findings show that trust and performance are connected. Delivering procedurally fair elections in the future will help to build trust and confidence in the IEBC in the long term. This is the herculean task that the IEBC must now focus on as it presides over the numerous by-elections arising from the 2013 general elections – it must ensure that the by-elections are managed and conducted professionally and in a free and fair manner. The CORD and Council of Governors' current political advocacy for referenda also presents an opportunity for the IEBC to recast itself as an independent and non-partisan electoral arbiter and in so doing work towards regaining confidence and trust among these actors and their supporters.

Given the survey findings that one in six eligible voters were prevented from registering to vote, some three million eligible voters could not register because they did not have ID cards, and, moreover, some 1.7 million eligible voters in Nyanza and Western Kenya did not register to vote, the IEBC should consider ways to expand voter registration among ethnic groups that perceive themselves as politically marginalised and in areas where registration is low. Vigorous public outreach and civic or voter education and awareness campaigns targeting these ethnic groups and the marginalised areas should be adopted. These campaigns should include multi-faceted and multi-media strategies. Furthermore, a simpler and more inclusive voter registration methodology will be useful.³⁰ This entails harmonising registration regimes and processes to facilitate a central registration roll from which separate voter registers can be extracted.

The integrity of the pre-election campaigns appears fairly intact. While some voters reported experiencing a range of activities, such as intimidation and vote buying, which violate the international standards for a proper pre-election environment, their rate of occurrence was very low.

Instead, Kenyans were far more likely to have a perception of electoral abuses without necessarily having witnessed or experienced them directly. This suggests that secondary

sources, rather than direct experiences, play an important role in informing voters about the election environment. Electoral stakeholders and actors can help to address negative perceptions by strictly implementing and enforcing electoral laws, regulations and codes of conduct during the pre-election campaigning period. Institutions that provide election-related information at elections (such as the media) also have a critical role to play in terms of monitoring and exposing abuses but also in providing voters with fair and balanced information regarding the regulatory framework and codes of conduct.

Perceptions of wider electoral abuse also influence the overall perception of electoral integrity, which, in turn, appears to influence perceptions about satisfaction with the democracy. Given the complex interrelationships between attitudes towards key democratic institutions and the democratic regime itself, the IEBC and other actors need to work towards shifting perceptions about elite behaviour in the political arena.

Kenyans remain supportive of international and domestic observers, but their utility is increasingly being viewed with scepticism

Besides the IEBC, there are other actors who play important roles in the run-up and during elections. These include, among others, the media, which enjoys a reasonably good level of public trust, the police and electoral observers.

If it is to be regarded as a force for establishing law and order and ensuring peaceful elections in future, the police service must strive to gain the public's confidence. It is necessary that the police adhere to the principles of professionalism, non-partisanship, impartiality, transparency and accountability and adopt a pro-active, flexible, efficient, equitable, rights-based approach towards their role in elections.

Kenyans remain supportive of international and domestic observers, but their utility is increasingly being viewed with scepticism. As a result, public confidence in international and domestic observer missions has declined somewhat over the years. It is therefore the responsibility of international and domestic observers to ensure that their work remains relevant and resonates with the will of the people. After all, election observation is a specialised form of human rights defence that provides an additional layer of voter and electoral rights protection.

Finally, ethnic identities continue to play an indirect role at elections, mainly because partisan coalitions and ethnic groups overlap to a large extent. Trust in and the legitimacy of various electoral institutions and actors are therefore not only shaped by partisan attitudes and coalitions but are also defined by ethnicity. The intersection between partisan politics and ethnicity provides opportunities for political actors to mobilise these identities at elections, often with disastrous consequences. It is within this context that electoral institutions – particularly the IEBC, the Registrar of Political Parties and the political parties themselves – must strive to build confidence among citizens by adopting a professional, non-partisan and non-ethnic approach to election management and electoral politics. If ethnicity is a politically mobilised identity that politicians and voters use to inform themselves about electoral competition and strategic political outcomes, ethnicity can equally be 'demobilised' by non-partisan actors and institutions.

Methodology

The Institute for Development Studies (IDS) at the University of Nairobi and the University of Cape Town, with the support of the ISS, conducted survey fieldwork for the Comparative National Elections Project between October and December 2013. Principal investigators at the University of Cape Town and the IDS, with the assistance of the Kenya National Bureau of Statistics, designed the sample. The sample is a nationally representative cross-section of all Kenyan citizens aged 18 years and older and employed a stratified, multi-stage cluster sampling methodology with 1 200 respondents (with a sampling error of no more than $\pm 2.8\%$ with a confidence level of 95%). The sample was stratified along the rural-urban population divide with the province (used as silent variable) providing rural-urban population for determining electoral constituencies as either 'predominantly rural' or 'predominantly urban'. The electoral constituencies were then used as the secondary sampling units from which enumeration areas (EAs) were randomly selected.

A total of 30 electoral constituencies (10 predominantly urban and 20 predominantly rural) were randomly selected from a frame of 210 constituencies from which an eventual sample of 1 200 respondents was randomly selected. Interviews were clustered into eight per EA in predominantly rural constituencies and four per EA for predominantly urban constituencies. It is worth noting that while the constituencies' frame was based on 210 (due to the unavailability of harmonised population figures for 80 new constituencies), the eventual distribution of EAs was across all selected constituencies, including new constituencies created from the old ones.

Notes

- 1 Odinga (of CORD) and some civil society groups have to date not accepted the IEBC presidential results. Odinga stated that even though he disagreed with the Supreme Court, he noted that its decision was final. He therefore accepted the court's judgement and agreed to abide by it and wished the president elect and his team well. He also indicated that he would continue to seek peaceful ways to end the row over the elections. See BBC, Kenya's Odinga 'to continue struggle peacefully', www.bbc.co.uk/news/world-africa-21985744.
- 2 Independent Review Commission, A Report on the General Elections of 2007 in Kenya, Nairobi: Government of Kenya, 2008.
- 3 The Carter Center, Observing Kenya's March 2013 National Elections, Final Report, www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-final-101613.pdf.
- 4 The Kenya National Dialogue and Reconciliation Monitoring Project's February 2013 report, entitled *Kenya 2013 General Election-Review of Preparedness*, indicated that the IEBC and the judiciary were highly rated among Kenyans. The IEBC was also rated as independent enough to conduct the 2013 polls and the judiciary capable to effectively and efficiently adjudicate over electoral disputes.
- 5 According to the Institute for Education in Democracy (IED), 'The establishment of the IEBC internalised some of the lessons learnt from its predecessors (the ECK and IIEC) [...] Due to this historical background, public expectations of the IEBC were also high at the time of its establishment [...] The task of the IEBC was extremely demanding and it is to its credit that many of the conditions preceding polling were satisfactorily met in a reasonably timely manner, enabling the elections to be held as scheduled. The IEBC was able to maintain a high level of public confidence in the pre-election period, which was critical to ensuring trust and peaceful participation.' IED, *Dynamics of Democracy, Strategies for Future Elections*, 2014, 18-20,
- 6 An audit of the 2013 national register of voters conducted by the IED indicated that the BVR technology was successful and enabled the IEBC to realise a voter registration rate of 68% for the 2013 general elections as compared to the registration rate of 59% during the 2010 constitutional referendum. The IEBC had targeted to register 18 million voters, which represented 85% of the eligible voters, which was projected at 21 191 491 as of 31 December 2012, based on the 2009 Population and Housing Census. Using the BVR technology, the IEBC managed to register 68% of the voting population. Also, the IED audit report showed that 99% of the records in the 2013 voters' register were accurate. See IED, *Beyond Digital: An Audit of the Quality of the Principal Register of Voters in Kenya*, 2014, 2-3, 12-13, 33 and 56.
- 7 European Union election observation press release, 6 March 2013.
- 8 C Schulz-Herzenberg, The South African 2014 national and provincial elections: the integrity of the electoral process, ISS policy brief 62, August 2014, www.issafrica.org/uploads/PolBrief62.pdf.
- 9 Pearson's. 128**
- 10 Pearson's. 650**
- 11 Cramer's V. 426**
- 12 Cramer's V. 412**
- 13 Even though there was no incumbent party and candidate in 2013, President Kibaki and his PNU were perceived to favour the Jubilee Coalition of Uhuru Kenyatta (who was deputy prime minister in President Kibaki's coalition government) as opposed to CORD, even though Odinga and his running mate, Kalonzo Musyoka, were respectively prime minister and vice president in President Kibaki's coalition government.
- 14 Cramer's V. .195**
- 15 Cramer's V. .228**
- 16 Cramer's V. .213**
- 17 Cramer's V. .273**
- 18 Cramer's V. .204**
- 19 See generally: K Makhoha, 'The Dynamics and Politics of Media in Kenya: The Role and Impact of Mainstream Media in the 2007 General Elections', in K Kanyinga and D Okello (eds), *Tensions and Reversals in Democratic Transition: The Kenya 2007 General Elections*, Society for International Development and Institute for Development Studies, University of Nairobi, 2010, 271.
- 20 Cramer's V. .167**
- 21 The questions posed in the survey were as follows: 'In your opinion, how much of a democracy is Kenya today? A full democracy; a democracy, but with minor problems; a democracy, but with major problems; not a democracy. In general, are you very satisfied, somewhat satisfied, not very satisfied or not at all satisfied with the way democracy is working in Kenya?
- 22 Supply of democracy and free and fair elections: Cramer's V. .225**; and trust in the IEBC: Cramer's V. .210**; Satisfaction with democracy and free and fair elections: Cramer's V. .230**; and trust in the IEBC: Cramer's V. .252**.
- 23 Crisis Group Africa, Report No. 197, *Kenya's 2013 Elections*, 17 January 2013, 29.
- 24 The Kenya National Dialogue and Reconciliation Monitoring Project, *Kenya's 2013 General Election, A Review of Preparedness*, February 2013, 18.
- 25 The full question posed was as follows: 'Do you think that when there are concerns about the fairness of elections, countries should or should not be willing to have international observers from the United Nations monitor their elections, or haven't you had a chance to hear about this issue?'
- 26 World publics strongly favour international observers for elections, including their own, www.worldpublicopinion.org September 2009 http://www.worldpublicopinion.org/pipa/pdf/sep09/WPO_ElecMonitors_Sep09_quaire.pdf
- 27 The Africa Centre for Open Governance, The Election Petition, www.africog.org/category/election-petition.
- 28 The Carter Center, Carter Center congratulates Kenyan voters on peaceful election, urges patience while results processed, 6 March 2013, www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/kenya-prelim-030613.pdf
- 29 The Independent Electoral and Boundaries Commission, Response to Petition archive, www.iebc.or.ke/index.php/resources/downloads/category/response-to-petition.
- 30 The United Nations Development Programme, A Guide to UNPD Democratic Governance Practice, 2010, www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/a-guide-to-undp-democratic-governance-practice-/DG_FinalMaster2-small.pdf.

About the authors

Collette Schulz-Herzenberg specialises in voter behaviour and elections in sub-Saharan Africa. Collette holds a PhD in politics, a master's degree in democratic governance and an honours degree in politics. She is currently a research associate at the University of Stellenbosch.

Peter Aling'o is a democracy and elections specialist. He is an advocate of the High Court of Kenya with an LLB and a master's degree in international law. He is currently a senior researcher as well as head of the ISS's regional office in Kenya. He has practised law in Kenya since 1993.

Sebastian Gatimu is a governance and human rights specialist. He is currently undertaking a PhD in development studies at the University of Nairobi and is a researcher in the Governance, Crime and Justice division at ISS Nairobi. He has a master's degree in development studies and a bachelor's degree in political science and public administration.

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Acknowledgements

This policy brief was made possible with support from the governments of Finland and Sweden. The ISS is also grateful for support from the other members of the ISS Partnership Forum: the governments of Australia, Canada, Denmark, Japan, Netherlands, Norway and the USA.

ISS Pretoria

Block C, Brooklyn Court,
361 Veale Street
New Muckleneuk,
Pretoria, South Africa
Tel: +27 12 346 9500
Fax: +27 12 460 0998

ISS Addis Ababa

5th Floor, Get House
Building, Africa Avenue,
Addis Ababa, Ethiopia
Tel: +251 11 515 6320
Fax: +251 11 515 6449

ISS Dakar

4th Floor, Immeuble Atryum
Route de Ouakam,
Dakar, Senegal
Tel: +221 33 860 3304/42
Fax: +221 33 860 3343

ISS Nairobi

Braeside Gardens,
off Muthangari Road
Lavington, Nairobi, Kenya
Tel: +254 72 860 7642
Fax: +254 73 565 0300

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