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Kenya's 2013 Elections: An Effective Assistance Model?
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Thank you, Mr. Chairman, for the opportunity to testify before the Subcommittee today on the recent general elections in Kenya. I appreciate this opportunity to share with you our experience supporting this electoral process that was in no small part due to the assistance of the U.S. Government and other international donors.

The International Foundation for Electoral Systems, better known as IFES, has worked in Kenya since 2002 advancing the rights of its citizens to participate in free and fair elections. Some of the most notable areas of technical support that we provided includes assistance to the Interim Independent Election Commission with the implementation of an electronic results transmission system, which resulted in a timely and transparent release of by-election and constitutional referendum results.

Building on this success, IFES and its partners under the Consortium for Elections and Political Process (CEPPS) received a grant from the United States Agency for International Development (USAID) in May 2011 to provide additional technical assistance to build the capacity and sustainability of the newly-formed Independent Electoral and Boundaries Commission (IEBC). This targeted support included capacity-building in the areas of voter registration, voter education, results transmission, oversight of political parties and the development of a dispute resolution mechanism. The overall goal of this technical support was to facilitate the IEBC's role in conducting transparent, credible and violence-free elections.

The Context of Our Support

The March 4 polls were the first nationwide elections in Kenya since the December 2007 presidential elections. As you are likely already aware, there was a disturbing outbreak of political violence after this vote that resulted in the death of approximately 1,500 people and the internal displacement of 300,000 more. The 2007 elections and the violent events that followed were a disappointment for Kenyans and members of the international community who had viewed the country as a bastion of stability in a volatile region.

In the aftermath, many reforms were initiated to address the mismanagement of the 2007 polls and the deep divisions within Kenyan society. These reforms included a new constitution that was supported and adopted by nearly 67 percent of the population in the peaceful 2010 referendum; the creation of a new, independent and publically-vetted election commission; the devolution of political power to the county level; and important judicial, security and media reforms.

These reforms also required the creation of an entirely new legal framework, including new laws governing the management of elections, the registration and financing of political parties, the

formation of new levels of government, the implementation of gender quotas, as well as the creation of regulations and procedures, forms, and technology to support their implementation. This reform process, which began with the enactment of the new constitution, was to culminate with the transition of power after the 2013 elections.

The Framework of Evaluation

Mr. Chairman, as the dust settles from the March 4, 2013, election, we can now begin to evaluate the effectiveness of the technical election support that IFES provided. In doing so, we would suggest the following questions serve as the base criteria for such an evaluation:

- Did the election's outcome reflect the will of the Kenyan voters, and was the election conducted in a manner that could withstand the inevitable scrutiny after such a close election?
- Were the advances in the democratic process significant enough to justify the investment?
- Did the assistance provided play an instrumental role in development of the institutions required to help Kenya realize its constitutional vision of major democratic reforms?

Accomplishments

Mr. Chairman, I believe the preparation and formulation of the CEPPS development framework in Kenya is at the cutting edge of what we know about sustainable political development, particularly in the context of technical election support. The CEPPS framework seeks to empower local assets by either partnering with government institutions that are directly responsible for implementing a powerful new mandate or with organizations that are instrumental in advocating for and ensuring change.

As part of this reform effort, the United States Government enabled IFES to provide a number of highly experienced advisors to the IEBC. Unlike many post-war elections where the international community serves as an interim election management body, we were strictly advisors, not "deciders". To that end, IFES recruited some of the brightest and most innovative minds on election management and technology in the business. Our organization pulled these individuals from both inside and outside of Kenya (including the United States, United Kingdom, Ireland, Uganda and the Philippines) to create a diverse and extremely talented pool of professionals, who earned the respect and trust of their IEBC colleagues. Our expertise continually sought to provide a range of options to the IEBC for decisions they faced, while also making recommendations that drew upon our 26 years of experience in over 135 countries around the world. Furthermore, we have had a commendable level of communication and collaboration with our State Department and USAID counterparts, including U.S. Ambassador Robert Godec and USAID Mission Director Karen Freeman.

Because of our longstanding commitment to supporting the electoral process in Kenya, combined with the professional relationships we have cultivated over the last decade, IFES was able to work with the new election commission to implement a number of very high profile reforms within a timeframe of 15 months or less. Some of these notable accomplishments include the implementation of five major pieces of new legislation including the IEBC Act, Elections Act, Political Parties Act, Kenya Citizenship and Immigration Act, and the Leadership

and Integrity Act. In addition, the IEBC created (or coordinate the creation with other institutions) the Registrar of Political Parties, Political Parties Disputes Tribunal, Political Party Liaison Committees in every county and constituency, and the rules of procedure for election dispute resolution.

Moreover, the IEBC had to create systems for the registration of political parties, the registration of independent candidates, and the entirety of their nomination procedures. The IEBC also carried out a new, nationwide delimitation of electoral boundaries; registered 14.3 million voters in less than one month; deployed 32,000 electronic voter identification systems (EVIDs), 32,000 mobile phones, and six sets of 18 million ballots. On top of all this, the IEBC introduced 3 major pieces of election technologies for the first time, including biometric voter registration (BVR), electronic voter identification, and a results management system.

On top of all this, the IEBC recruited 260,000 new poll workers, set up a nationwide call center for questions and answers, and created a transparent and auditable system for official reporting of votes. Please keep in mind that this was all done in 15 months or less and in one of the most contentious election environments in the world. Indeed, the scale of what the IEBC was able to accomplish was ambitious and impressive for even the most seasoned of election commissions around the world.

Mr. Chairman, I was in Kenya during this election and had a chance to meet with the IEBC Chairman and the other IEBC Commissioners on several occasions. Their sense of determination and resolve to ensure that this election was not a repeat of the 2007 vote was highly commendable. IEBC Chairman Hassan personally remarked to me that, “Kenya will not burn” and I must say that his message to me was powerful, memorable and accurate.

Thus, the culmination of all this preparation and resolve was the March 4 election, where the eyes of the world were upon the IEBC’s management of this big event. In this election, 86 percent of registered voters turned up to vote— a number that constitutes the highest turnout in Kenya’s history. Ultimately, the new Kenyan president, Mr. Kenyatta, was elected by a margin of 8,000 votes, or 7/100ths of a percent of the total votes cast, making it inevitable that the result would be challenged.

Many of these legal challenges focused on the technology that failed to perform as the election commission had planned. In addition, there were many well-publicized news articles on the breakdown of election technology in the process. Let me be clear in saying that what was cited as a failure of technology was actually a failure of project management. In short, there was an attempt to implement too much technology in too short of a time and important details were lost in the process. These issues can and should be corrected with proper attention to project management in the future.

However, what also remains clear is that the media and candidates often failed to understand the vote counting and reporting process. The legally-defined process for results reporting relied not on technology, but on paper forms and signatures that created legal accountability for election officials. The electronic system was designed to provide immediate flow of data and transparency while waiting for the official reports to come in. Although the system faced

problems, it did avoid a one of the central problems of the fated 2007 election, which was a total blackout of communication while the election commission tabulated results.

Ultimately, the official paper-based procedure of counting and tallying votes was certified as credible and ensured the Kenyan electorate's presidential choice was made known. The credibility of the IEBC's count was corroborated by the parallel vote tabulation carried out by the Elections Observation Group (ELOG) in Kenya and by most of the international observation missions, such as The Carter Center.

Perhaps the most important evidence the election process was credible was that the second place finisher, Mr. Raila Odinga, accepted the results and then called for calm and unity amongst his own supporters. This action ultimately led the way to a successful transfer of power in early April, which is one of the key indicators of democratic consolidation in the study of democracy and governance.

Moreover, except for the unfortunate clashes that occurred in western Kenya after the Supreme Court ruling upholding Mr. Kenyatta as the winner, there were very few incidences of violence or unrest in the country. The fact that this event was peaceful is a testament to the resolve of Kenyan citizens who were quite vocal about desiring peace and also to effective new institutions, such as the Supreme Court that dealt with many of the highest-profile election disputes. Because of the judiciary reforms that had taken place in the last two years, there was more confidence and trust in the judiciary to address complaints and disputes in an unbiased manner.

In all, I believe there will be two important points that will remain in the historical narrative about this election. Simply put, this election has been recognized as peaceful and credible by most international and domestic stakeholders. This much was recognized by our own government including the Secretary of State and the White House. IFES takes pride in the fact these were the two main objectives of its USAID-funded program in Kenya.

Lessons Learned

Mr. Chairman, while the Kenya model will go down as successful, I would also say the model does raise new, appropriate questions for development agencies and implementing organizations.

One of the things that IFES looks for in the countries we work is that crucial element of people mobilized for change. We think foreign assistance money is most effective and sustainable when it seeks to empower local assets in governments or communities. This can be evident in institutions that have clear mandates for change and a demonstrated desire to follow through with that work. We think leveraging this type of existing strength is one of the building blocks to sustainable, effective and efficient development.

Please let me be forthright in saying, though, that there is no shortage of these qualities in Kenya, particularly in the institutions and organizations that acted as our beneficiaries. The IEBC, who was the beneficiary of much of our support, was entrusted with a massive task that constituted a broad and ambitious mandate. It is no understatement to say the stability of the country was put in the hands of the Commission this March.

The question the Kenya model raises, however, addresses the issues of change from a different angle. Namely, that question is not how we can map, locate and partner with elements of change within society. Rather, the question is how can we do better at helping our beneficiaries manage expectations when a society demands more change at a faster pace than can be realistically implemented? I expect this issue to become more and more prevalent in the election assistance field, particularly as it relates to the implementation of new forms of technology.

We must ensure that our partners know election technology helps mitigate certain types of fraud, but it also opens the door for other (more technologically advanced) forms of fraud. Moreover, without auditable paper trails, election technology can also open up the process to widespread failure and a lack of transparency. Election technology is a great thing, but it must be done in such a way that is responsible to the electoral process at large.

As an example of this, I would draw the attention of this Committee to early August 2012 when due to a delayed and ultimately canceled tender for biometric voter registration (BVR) kits, the IEBC made a decision to implement Optical Mark Reader machines for the March 2013 elections instead of a fully biometric system. This was done because the timeline for sourcing, evaluating, purchasing, shipping, distributing and training had become dangerously short to ensure a successful implementation of this technology. The IEBC Chairman was then summoned to a meeting of Cabinet-level officials, who made it known that they were fully behind a biometric system. The advice of the Executive eventually trumped the IEBC Chairman and the country proceeded to source BVR kits in a government-to-government arrangement with the Canadian Corporation Commission despite the narrow and ambitious timeframe the IEBC then faced. As a result, the voter registration process was negatively impacted by delays and faulty or lack of BVR kits in some polling stations due in great part to the circumstances in which the technology had to be implemented and utilized.

Timelines were always an issue throughout this electoral process in Kenya, Mr. Chairman. Given the number of statutory deadlines and new prerequisites for the implementation of the electoral process prior to March 2013, the IEBC was faced with a continuous race against the clock compounded by the pressure to conform to numerous political agendas.

In the coming weeks and months, IFES will be working with the IEBC to help lead a comprehensive lessons learned event. IFES views elections as a cycle and maintains that initial planning for the next event must begin almost immediately following the completion of the previous election. As such, we will help assess the 2013 election, apply lessons learned to planning for the next election and help propose any additional electoral reform that is necessary.

Continued Support

Mr. Chairman, I think the Kenya model reinforces the importance of technological international support to the election process. While the Commissioners that IFES worked with were highly-educated, extremely respected and very competent individuals, many of them lacked election management experience, which is very specific to this type of democratic process. These Commissioners were now also being asked to manage one of the world's most visible elections in one of the world's most contested electoral environments. To make matters more complicated,

the IEBC was introducing technology that required a level of expertise which could only come from highly skilled election and ICT specialists.

Moreover, the trend of foreign election assistance is increasingly focused on procuring the services of highly technical support that cannot be sourced within the country. Without this crucial expertise, particularly as it relates to the introduction of technology into the electoral process, the ramifications of making decisions without the proper experts to advise could undermine the whole process.

While I was in Kenya for the election, I learned of a story that highlights the importance of international expertise. Nearly two weeks before the election date, the eight presidential campaigns joined together and signed a document demanding from the IEBC to scrap the paper register. Given the amount of ballot stuffing in the past, the candidates felt the biometric kits that polling stations were provided constituted the most secure way of ensuring the identity of the potential voter. I have no doubt this request was a good-faith effort to ensure the accuracy and transparency of the process of identifying voters at the polling stations.

However, the bigger picture of risk and election credibility was being lost. The election commission was about to embark on an election utilizing two forms of technology that had very little testing. Even more, the candidates were operating under a misconception regarding how the technology transmitted its data. In the event that these biometric kits had not worked, and there was no paper register involved, there would have been virtually no way to ensure a voter was registered to vote at a particular polling station. That move could have not only threatened the credibility of the vote, but it could have shut down the vote itself. I would like to credit our Country Director, Mike Yard, who was able to make a last minute intercession with the candidates' representative and explain why scrapping the paper register would have been an unadvisable idea at that stage. Mr. Yard, I must also say, had the full backing of the U.S. Embassy and other donors.

As we all know now, the paper register and paper ballots were ultimately what ensured the integrity of the Kenyan election. If internal political pressure had been exerted upon the Commission to scrap their paper register and had the IEBC given into the demand, I am afraid the international community would now be trying to mitigate widespread election violence as a consequence.

Conclusion

Mr. Chairman, it is with this in mind that the Kenya assistance model reinforces the need for (and importance of) highly-skilled foreign assistance. The model also introduces questions for us to reflect on and learn lessons, particularly as to how we can better help our beneficiaries in managing the expectations of the population they represent and the context in which they can meet these expectations. It is clear the Kenya assistance model has been a success and represents a true partnership between the international community and the Government of Kenya. Enough safeguards were included to ensure it was a credible vote (not critically dependent upon technology) and the process was peaceful. As mentioned, elections are a process and not an event and, as a result, IFES hopes to stay engaged with the IEBC and the democratic evolution of Kenya for the next set of elections scheduled in August 2017.