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Elections in Kenya

March 4 General Elections

Frequently Asked Questions

Africa

International Foundation for Electoral Systems

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Frequently Asked Questions

Why are the March 4 elections in Kenya so important?	1
What current geopolitical issues does Kenya play a central or strategic role in?	2
How did the 2007 and 2008 election violence affect the country?	2
What were some of the main drivers of election violence in 2007 and 2008?	3
What impact has the 2010 constitution had on the Kenyan nation?	3
What elections will take place on March 4?	4
Under the new constitution, what institution has the mandate to carry out elections?	4
What is the structure of the Independent Electoral and Boundaries Commission?	5
How was the Independent Electoral and Boundaries Commission chosen?	5
What challenges has the Independent Electoral and Boundaries Commission faced in organizing these elections?	6
What issues did the Independent Electoral and Boundaries Commission face with the procurement of biometric voter registration kits?	7
Does the public know where the potential hotspots for violence are located?	7
Who is eligible to vote in this election?	8
Who is eligible to run as a candidate in this election?	8
Do candidates need to be affiliated with a political party in order to run for office?	9
What type of electoral system will be used to translate votes into seats?	9
Who are the main political contenders for the presidency?	10
What is the connection between the International Criminal Court and these elections?	10
How will the International Criminal Court process affect the election?	11
What are Kenya's treaty obligations related to holding democratic elections?	11
How was voter registration conducted? How many people were registered?	12

Disclosure:

These FAQs reflect decisions made by the Kenyan elections authorities as of February 27, 2013, to the best of our knowledge. This document does not represent any IFES policy or technical recommendations.

Why was biometric voter registration used to create the new voter roll?	12
Can a voter who is not registered still cast a provisional ballot?	12
Were voters issued a voter card during registration?	12
Was the voter roll provided for public scrutiny?	13
What does the constitution say about voting for Kenyan citizens who are residing abroad?	13
Will members of the diaspora vote in this election?	13
Will prisoners be able to cast a ballot?	14
How many polling stations will there be?	14
How will ballots be distributed throughout the country?	14
How did the Independent Electoral and Boundaries Commission delimit constituency boundaries and then determine the placement of polling centers?	14
What efforts have been made to ensure the physical safety of Kenyans who want to vote?	15
What percentage of the Kenyan population has some form of disability and what provisions have been made to make this election accessible?	15
How does a polling station official determine whether a voter is entitled to assistance?	16
What issues have women faced in trying to ensure their inclusion in the political process?	16
How many poll workers are employed by the Independent Electoral and Boundaries Commission?	17
What are the steps for voting?	17
Will voters use any form of electronic voting?	17
What technology will be used during the March 4 election?	17
What if a voter's fingerprint is not found on the electronic voter identification device?	17
Who will monitor the Kenyan elections?	18
What time do polling stations open and close on March 4?	18
How will election disputes be adjudicated?	18

What are the laws governing political parties?	19
How, when and where will the results be counted and transmitted?	19
When are the results final?	20
Is there anywhere where I can see a map of the election results?	20
What social media outlets do the Independent Electoral and Boundaries Commission use to reach out to the media and Kenyan citizens?	20
Resources	21

Why are the March 4 elections in Kenya so important?

The March 4 polls will be the first nationwide election since the December 2007 presidential elections, which led to unsettling post-election violence, including the death of approximately 1,500 people and the internal displacement of at least 300,000 more.

In the aftermath of that violence, 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 election commission after the previous commission was disbanded; the devolution of political power to the county level; and important judicial, security and media reforms.

As the March 4 poll draws near – and with many of the needed reforms in place – the world is eager to see how the next generation of elections in Kenya will unfold. In addition to the institutional reforms that have been made, the new Independent Electoral and Boundaries Commission (IEBC) has introduced a number of operational and technological improvements in the voting process, such as biometric voter registration (BVR) and electronic transmission of election results.

While the reform process has been marked with notable challenges such as failure to enact the 2012 Campaign Finance Bill, late amendments to electoral laws, and constrained timeframes following the delayed procurement of the BVR system, the improvements that have been made offer hope that the upcoming elections will be free, fair and transparent. The upcoming elections will be the first general election under – and the first major test of – the new constitutional, legal and institutional framework.

What remains to be seen is whether the reforms and improvements will be sufficient to prevent and curtail electoral violence. As the International Crisis Group rightly notes, “the problem during the previous elections was not only the laws themselves, but also respect for those laws.”¹ In this regard, the political violence that preceded party primaries held earlier this year provides reason for concern.

The disturbances associated with the 2007 elections gave a jolt to the country’s democracy and sent shockwaves through the region. Therefore, this election comes at a critical juncture in Kenyan history. The March 4 election will not only provide a gauge of how much progress has been made since 2007, but also provide a test of the newly-instituted reforms.

¹ International Crisis Group (2013). *Kenya’s 2013 Elections, Africa Report No°197*.

What current geopolitical issues does Kenya play a central or strategic role in?

Kenya is considered the “anchor state” of East Africa. The country plays an important role in the cultural, economic and political life of the region. Kenya is strategically located on the East African coastline and serves as the main business hub for the East African community. The country facilitates trade and transportation throughout the region via its massive seaport in Mombasa. Additionally, the Kenya-Uganda railway moves a tremendous amount of goods between the two African nations. On top of this, the governments of Kenya, Ethiopia and South Sudan are in the process of creating a massive infrastructure project that will provide an alternative for South Sudan to transport oil through the Kenyan port of Lamu.

The strategic importance of Kenya can further be highlighted by the influential role that Nairobi plays in political negotiations between South Sudan and Sudan. Kenya has, in a sense, provided neutral ground on which negotiations between the two countries could be held, and also stood at the forefront of the regional peace process that yielded the Comprehensive Peace Agreement. Kenya, like Uganda and Ethiopia, continues to provide human resources, technical skills, as well as other governmental assistance to the newly independent country of South Sudan. Moreover, Nairobi is host to a number of international organizations such as the United Nations and others who are continuously setting up headquarters to oversee their operations in Africa.

Currently, Kenya is contributing troops to the African Union Mission in Somalia (AMISOM), which is mandated to support the transitional government in the country. Together with the Ethiopian and Somali military, Kenya launched an offensive operation against Al-Shabaab named “Operation Linda Nchi” to assuage its deteriorating economy due to the insurgency and instability caused by the Islamist militants.

How did the 2007 and 2008 election violence affect the country?

The election violence that followed the 2007 Kenyan election had a tremendous impact on the country. During the conflict, approximately 1,500 Kenyans lost their lives and at least 300,000 people were internally displaced. On top of these staggering numbers, the economy experienced a dramatic slowdown, with economic growth falling from 7.1 percent in 2007 to between 2 and 2.5 percent in 2008. Kenya’s main economic sectors, such as shipping and tourism, suffered dramatic downturns.

Moreover, political order and stability was severely disrupted as a result of the contested election. There were claims of both outright victory and fraud by both of the main presidential contenders. It was only after two months of intense negotiations between the opposing parties, combined with the mediation efforts of former UN Secretary-General Kofi Annan, that political leaders established a Grand Coalition Government (GCG) and an agreement to write a new constitution.

Out of this tragedy, Kenyans have implemented a number of democratic reforms and institutional strengthening measures. It is hoped that the combined effect of these interventions will not only sustain

Kenya's status as the anchor state in the region, but also consolidate the democratic reforms that can provide the country with further stability and growth in this challenging geographical region.

What were some of the main drivers of election violence in 2007 and 2008?

Since Kenya's independence from the United Kingdom in 1963, violence and tension in the country has often been shaped along ethnic lines. Elections have been a main event politicians and other leaders have used to capitalize on ethnic identities and exploit them for political gain. This exploitation has taken different forms. In some cases, political rhetoric has been so heated that it is easily categorized as hate speech. In other cases, political patronage of the State's resources has provided benefaction to a winning candidate's ethnic base at the expense of areas populated by other ethnic groups, which desperately need infrastructure and resources.

Elections in Kenya have been often seen as conduits of zero-sum politics, which have incentivized politicians to inflame underlying social tensions to advance their own interests. As a result, this has led to conflict, particularly at a local level, in nearly every poll since the re-introduction of multi-party elections.²

There were other factors that contributed to the 2007 and 2008 post-election violence. The previous election commission, the Election Commission of Kenya, was cited in the Kriegler Report³ to have been wholly unprepared for the scope and complexity of the election they were administering. Allegations of voter fraud perpetrated by both of the main political parties, an inadequate voter list that contained over one million dead individuals and an unacceptably slow results transmission and tabulation process were some of the factors that exacerbated an already tense situation. The media also played a part in the process by breeding mistrust among the electorate and by reporting on unobjective, unsubstantiated or otherwise divisive information.

What impact has the 2010 constitution had on the Kenyan nation?

The 2010 constitution will continue to have an immense impact on how the Kenyan government will be run. Perhaps the most significant reform is the creation of 47 counties throughout the country that will become new, sub-national administrative districts. Each of these counties will have its own governor, assembly and senator that will oversee a number of issues within the respective region. This reform, along with increasing judiciary and legislature oversight, will now decrease the power and influence of the presidency.

² The International Institute for Strategic Studies (2013). *Strategic Comments: Kenya's election: Risk of renewed violence*, Volume 19, Comment 3. Retrieved from <http://www.iiss.org/publications/strategic-comments/past-issues/volume-19-2013/january/kenyas-election-risk-of-renewed-violence>.

³ Following the 2007 presidential election, the Independent Review Commission investigated the poll and made recommendations to improve the electoral process in this report. http://www.kas.de/wf/doc/kas_16094-1522-2-30.pdf?090428104720.

Additionally, the 2010 constitution reformed the electoral system for the presidential election. In order for a presidential candidate to win outright, he or she must obtain a majority of votes in the country and at least 25 percent in over half of the counties. This provision was included in the constitution to ensure that a candidate has broad support throughout a number of geographical regions and ethnic groups.

The constitution also has a progressive gender requirement. It mandates that all governmental bodies, whether appointed or elected, are composed of no more than two-thirds of one gender. This will be used to ensure that at least one-third of all governmental seats are filled by women. There has been uneven application of this provision for a number of reasons thus far.

What elections will take place on March 4?

On March 4, 2013, voters will cast separate ballots for six different elections: (1) the president; (2) members of the National Assembly, elected from single-member constituencies; (3) women's county representatives, one elected from each county; (4) senators, one elected from each county; (5) governors, one elected in each county; and (6) members of county assemblies, elected from wards within the counties.

The March 4 elections are considerably more complex than the referendum that was held in 2010. Referendums invariably have two choices – yes or no – and the entire country has a single ballot. In contrast, Kenyans will now be voting on six different races, with multiple candidates at each level. In practice, each ward will have a different ballot thereby creating a scenario where there are literally thousands of different individual elections throughout the country.

Under the new constitution, what institution has the mandate to carry out elections?

The Independent Electoral and Boundaries Commission (IEBC) was appointed in 2011 following the enactment of the new constitution in 2010. The commission's function and mandate, as provided for in Article 88(4) of the constitution, is to "conduct or supervise referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an act of Parliament and, in particular, for; a) the continuous registration of citizens as voters and revision of the voter's roll, b) the delimitation of constituencies and wards, c) the regulation of political parties process, d) the settlement of electoral disputes, e) the registration of candidates for elections, f) civic and voter education, g) the facilitation of the observation, monitoring and evaluation of elections, h) the regulation of money spent by a candidate or party in respect of any election, i) the development of a code of conduct for candidates and parties, and j) the monitoring of compliance with legislation on nomination of candidates by parties."⁴ The March 4 elections will mark the first nationwide vote under the direct supervision of the IEBC and serve as a major test to the institution's capacity to carry out a successful election.

⁴ Independent Electoral and Boundaries Commission (2012). *Vision, Mission and Mandate*. Retrieved from <http://www.iebc.or.ke/index.php/home/vision-mission-a-mandate>.

What is the structure of the Independent Electoral and Boundaries Commission?

The Independent Electoral and Boundaries Commission (IEBC) consists of a chairman, eight commissioners and a professional secretariat that manages the day-to-day tasks of the commission. The chairman and commissioners are appointed by the president and confirmed by parliament to serve a single six-year term limit, and are not eligible for re-appointment.

The secretariat is composed of the chief electoral officer (CEO), two deputy chief electoral officers (DCEO), nine directors, 17 managers, 17 regional election coordinators and 209 constituency election coordinators.⁵

The commission has nine directorates, each headed by their respective director:

- Voter Education and Partnerships
- Voter Registration and Electoral Operations
- Information Communication Technology (ICT)
- Finance, Human Resources and Administration
- Legal and Public Affairs
- Research and Development
- Risk and Compliance
- Registrar of Political Parties

How was the Independent Electoral and Boundaries Commission chosen?

The Independent Electoral and Boundaries Commission (IEBC) commissioners were chosen through a public, transparent and competitive process. A seven-member panel, headed by Dr. Ekuru Aukot, who was appointed by President Mwai Kibaki and Prime Minister Raila Odinga and approved by Parliament, was established to facilitate and oversee the selection of commissioners. The positions were advertised through various media outlets. To qualify, one must have had a college degree, a completed IEBC application, a curriculum vitae and recommendations. The position of chairperson must have had the equivalent qualifications of a judge on the Supreme Court. There were over 400 applications received and, out of those applications, 329 met the basic qualifications.

The rigorous selection process was then divided into three stages after the initial selection of applicants. The first stage looked at issues of integrity and whether applicants had participated in politics within a five-year timeframe. The second stage looked at experience in electoral matters, management, finance, law and public administration. The third and final stage focused on human resource management and gave weight to other considerations under the constitution, such as gender and marginalized groups. A

⁵ Independent Electoral and Boundaries Commission, (2012). *IEBC Secretariate*. Retrieved from <http://iebc.or.ke/index.php/home/iebc-secretariate>

portion of interviews were televised throughout the country and disqualified applicants received explanations regarding the panel's final decision.

What challenges has the Independent Electoral and Boundaries Commission faced in organizing these elections?

The main challenge the Independent Electoral and Boundaries Commission (IEBC) has faced is the implementation of changes made to the electoral process. The commission also faces extremely high expectations about the 2013 election, along with an inadequate amount of time and insufficient level of funding. At times, these challenges have put the IEBC at odds with groups such as the president's office, members of the Kenyan diaspora and election vendors.

For instance, the election commission undertook a contentious procurement of biometric voter registration (BVR) kits, which managed to be sourced at the last minute in a commercial procurement facilitated through a government-to-government arrangement with the Canadian Commercial Corporation (CCC). Under a severely compressed timeline, the IEBC used the kits to register approximately 14.3 million Kenyans in a shortened registration period. This delay further impacted the start of other processes, including candidate nomination and voter education. The IEBC also faced criticism from members of Kenya's diaspora, who felt that the new constitution's mandate to enfranchise them "progressively" would not be fully realized on March 4.

Despite the compressed timeline and heavy scrutiny, a number of crucial, high-profile tasks have already been successfully carried out by the IEBC. This includes boundary delimitation, the procurement of new BVR kits, voter registration and the hiring and training of thousands of district and headquarters staff.

As it relates to Election Day, all eyes will be on the IEBC as they implement their election procedures. People will want to know if the IEBC has put rules in place to detect, deter and mitigate fraud, manage electoral disputes efficiently and transparently and keep the peace. As one might expect, this will be an immense challenge, as the March 4 poll is arguably the most logistically-complex election the country has ever faced.

IFES MULTIMEDIA: Watch IFES' event on [*Kenya Elections: Building a Peaceful, Credible Political Process*](#).

What issues did the Independent Electoral and Boundaries Commission face with the procurement of biometric voter registration kits?

The process of acquiring biometric voter registration (BVR) kits was riddled with controversies that threatened to diminish confidence in the voter roll and the Independent Electoral and Boundaries Commission (IEBC). A high-profile procurement process for the BVR kits in the amount of \$50 million USD was canceled by the IEBC, which triggered public concern and allegations of political sabotage. In reaction to the controversy surrounding the process, the IEBC announced it had terminated the process of acquiring BVR kits and, instead, intended to use the Optical Mark Reader, which was used in the 2010 referendum. However, after talks with President Kibaki and Prime Minister Odinga, the IEBC reversed its decision. The commission then requested the BVR kits to be procured through an arrangement with the Canadian Commercial Corporation (CCC), which used money borrowed at commercial rates. Eventually, this arrangement rendered Morpho Canada Inc. as the supplier of approximately 15,000 BVR kits.

Does the public know where the potential hotspots for violence are located?

Many of the same underlying drivers of violence still exist as they did during the last election. For instance, similar to the demographics in 2007, there are a number of unemployed youth in the poorer areas of Nairobi. Additionally, Al-Shabaab in the North has a demonstrated history of terror attacks within Kenya and the Mombasa Republican Council, a separatist group located in Mombasa, poses a real and present threat in its desire for that region to secede from Kenya. Specifically, as the Center for Strategic & International Studies in Washington, D.C., notes, these same factors would lead observers to focus on four areas where the likelihood of violence seems highest: Nakuru County in the Rift Province; the Tana River area and southern Mombasa in the Coast Province; and Kenya's main urban areas.⁶

However, the 2013 election introduces new dynamics that will shape where election violence might occur. For instance, part of the constitutional reform process introduced a devolved system of governance, whereby a significant amount of political power has been transferred to the country's 47 newly-created administrative units. Races for these seats will be intense, as regional officials will now wield considerable power within the region. On top of that, new constituent boundaries have been delimited, which will undoubtedly shift the political dynamics of various electoral districts. The end result of these reforms is that there is currently no consensus as to where election-related violence may occur in regard to these new contests.

Additionally, the political leaders of the two ethnic groups (Kikuyu and Kalenjin) that accounted for the most significant violence after the 2007 elections have joined together under the Jubilee Alliance. While the reason for the political alliance may have more to do with the pending International Criminal Court case against their leaders, the potential ramifications of the alliance could lead to a much more peaceful process between two groups that have a history of violent encounters with each other.

⁶ Center for Strategic & International Studies (2012). *Reading the Tea Leaves on the Kenyan Elections: Patterns of Violence and Political Alliances*. Retrieved from <http://csis.org/print/40585>

Who is eligible to vote in this election?

All citizens who were registered on or before the deadline of December 18, 2012, are eligible to vote in the March 4, 2013 general elections. As established by Article 83 of Kenya's constitution, "A person qualifies for registration as a voter at elections or referenda if the person: (a) is an adult citizen;⁷ (b) is not declared to be of unsound mind; and (c) has not been convicted of an election offence during the preceding five years."⁸

In order to register, the individual must also be in possession of a national ID card or passport.

Who is eligible to run as a candidate in this election?

For Parliament, a person is eligible for election as a member if the person is a registered voter; satisfies the educational, moral and ethical requirements as prescribed by the constitution or by an act of Parliament; and is nominated by a political party.⁹

In the case of an independent candidate, he or she must not be a member of a political party, nor have been a member of one for at least three months.¹⁰ Additionally, he or she must be supported by at least 1,000 registered voters in the constituency for election to the National Assembly, or by at least 2,000 registered voters in the county for election to the Senate.¹¹

There are many reasons a person can be disqualified from being elected to Parliament, pursuant to Article 99 of the Kenyan constitution: State officers and other public officers outside members of Parliament are prohibited from running; individuals who have held office at any time within the five years immediately preceding the date of election; held office as a member of the Independent Electoral and Boundaries Commission; has not been a Kenyan citizen for a minimum of 10 years immediately preceding the date of election; is a member of a county assembly; is of unsound mind, bankrupt or found to have misused or abused a State office or public office in accordance with any law; is subject to a sentence of imprisonment of at least six months at the date of registration as a candidate or at the date of election and all possibilities of appeal or review of the relevant sentence or decision has been exhausted.¹²

For the president, a person qualifies for nomination as a candidate if the person is a citizen by birth, is qualified to stand for election as a member of Parliament, is nominated by a political party or is an independent candidate and is nominated by a minimum of 2,000 voters from a majority of the counties.¹³ Clause 2 of Article 137 stipulates that a person is not qualified for nomination as a presidential candidate

⁷ The Constitution of Kenya, 2010, goes on to elaborate in Article 260 that "adult" means an "individual who has attained the age of eighteen 18 years," unless otherwise directed. Eighteen is the threshold for voting in the March 4 election.

⁸ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 7, Article 83, Sec. 1.

⁹ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 8, Article 99, Sec. 1.

¹⁰ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 8, Article 99, Sec. 1.

¹¹ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 8, Article 99, Sec. 1.

¹² The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 8, Article 99.

¹³ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 9, Article 137.

if the person owes allegiance to a foreign state and is a public officer or acting in any State or other public office, with the exception of the president, deputy president or a member of Parliament.¹⁴

Do candidates need to be affiliated with a political party in order to run for office?

No. Article 85 the constitution states that, “Any person is eligible to stand as an independent candidate for election if the person: (a) is not a member of a registered political party and has not been a member for at least three months immediately before the date of the election; and (b) satisfies the requirements of being an eligible candidate for election to the presidency, National Assembly, Senate or county assembly.”¹⁵

What type of electoral system will be used to translate votes into seats?

The new constitution introduces significant reform into the country’s electoral system. For the presidency, a candidate will be elected as president if he or she receives more than half of all of the votes cast in the election, and at least 25 percent of the votes cast in 24 of the 47 counties. This qualified majority system was introduced to ensure that the winning candidate retains support across a number of different regions and groups. If no candidate is elected in the first election, a run-off election between the top two candidates will be held no later than 30 days after the previous election. In the run-off, the candidate who receives the most votes will be declared the winner.

For seats in the National Assembly, there are a total of 350 parliamentarians who are elected in various ways. The new system created 290 parliamentarians who are directly elected by constituents in single-member districts under a first-past-the-post (FPTP) system. In addition to the 290 parliamentarians, there are 47 directly-elected women representing each county in single-member constituencies under a FPTP system.

There are 12 reserved seats for special interest groups. These seats will be nominated proportionally by a political party list system, which will allocate seats to parties in proportion to their number of directly won seats in the FPTP system described above. This allocation is, in principle, meant to give historically underrepresented groups (such as people with disabilities, youth, etc.) a voice in the political system. Parliamentarians have agreed that if their presidential candidate loses the election, they may be able to place those candidates on the special interest list in order to ensure that they retain political power.

In the Senate, there are 47 directly-elected members, one from each county, elected under a FPTP system. Sixteen seats will be set aside for women who will be nominated by a party list system and then allocated seats by the proportion of elected members in the Senate. There will also be two youth seats (one man and one woman) set aside to represent youth interest and two members (one man and one woman) representing persons with disabilities.

¹⁴ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 9, Article 137.

¹⁵ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 7, Article 85.

As an additional note, in both the Senate and National Assembly, the members of each body will elect a Speaker who is not currently a member. This *ex-officio* position will bring the total number of members in each body up to 68 in the Senate and 350 in the National Assembly.

National Assembly
290 Parliamentarians
47 Women's Seats
12 Special Interest
1 Speaker (<i>ex officio</i>)
350 Members

Senate
47 Senators
16 Women's Seats
2 Youth Seats
2 Disability Representatives
1 Speaker (<i>ex officio</i>)
68 Members

Who are the main political contenders for the presidency?

The two main presidential candidates in the March 2013 election are Raila Odinga, who is topping the ticket of the Coalition for Reforms and Democracy, and Uhuru Kenyatta, who is leading the Jubilee Alliance.

Odinga is the current Prime Minister of Kenya and the figurehead of the Orange Democratic Movement (ODM) party. He is the son of Kenya's first Vice President and was the main opposition candidate in the heavily contested 2007 election that was marred by post-election violence. Kenyatta is the son of Kenya's first President, Jomo Kenyatta, and has served as Deputy Prime Minister since 2008. He is the leader of The National Alliance (TNA) and former Chairman of the Kenya African National Union (KANU) party.

The other six candidates standing for the presidency are Deputy Prime Minister Musalia Mudavadi, Member of Parliament Martha Karua, Assistant Minister for Planning, National Development and Vision 2030 Peter Kenneth, former Education Permanent Secretary James Ole Kiyapi, former Member of Parliament Paul Muite and businessman Mohammed Abduba Dida.

What is the connection between the International Criminal Court and these elections?

In the aftermath of the 2007 and 2008 election violence, the International Criminal Court (ICC) at The Hague brought charges against six individuals, including presidential candidate Uhuru Kenyatta and vice presidential candidate William Ruto. Both candidates are charged with being indirectly, but criminally responsible for crimes against humanity, including murder and persecution. The ICC believes Kenyatta and Ruto played a role in the infliction of interethnic violence between Kikuyus and Kalenjins. Their trials are scheduled to begin on April 10 or 11, which is potentially just days after the run-off election.

Under the Rome Statute, to which Kenya is a signatory, Kenya is obligated to extradite Kenyatta and Ruto to the ICC even if they hold the presidency and vice presidency – according to an “irrelevance of official capacity” clause – a possible outcome with the new Jubilee Alliance. Additionally, the Kenyan constitution also states that presidential immunity does not extend to crimes that can be prosecuted under a treaty that Kenya is party to. As such, there is no legal provision that relieves Kenya of its obligation to

extradite. Both Kenyatta and Ruto have asserted that they would cooperate fully with the ICC if they are elected. Neither candidate is expected to travel to The Hague in the event of a run-off.

How will the International Criminal Court process affect the election?

In some ways, the new alliance between Kenyatta and Ruto actually reduces the threat of wide-scale violence between their respective ethnic groups, the Kikuyus and Kalenjins. In 2007 and 2008, the inter-ethnic violence between Kikuyus and Kalenjins accounted for most of the civil discord that swept Kenya. As a result, the controversial alliance could foster peace between these two ethnic groups during the tense election period.

However, the threat of prosecution by the International Criminal Court (ICC) at The Hague does also increase the stakes for Kenyatta and Ruto in this election. If they lose, the new regime may not be willing to protect them and, instead, may be “eager to sideline former rivals by supporting the ICC process.”¹⁶ Instead, this could incite violence by the Kalenjins and Kikuyus against other groups, particularly if the results are close, contested or unclear.

There are additional concerns to note if the Jubilee Alliance does win. Domestically, Kenyatta’s political power may be diminished, marginalized or seriously challenged by political opposites. There could be impeachment proceedings, which would curtail the efficiency and effectiveness of the presidency. Additionally, Kenyatta and Ruto could choose to participate in the ICC process, which would take them away from Kenya for months at a time. Or, alternatively, Kenyatta and Ruto could choose to try to derail and de-credit the ICC process by using their domestic and international clout against the institution.

Recently, former UN Secretary-General Kofi Annan has been outspoken by urging Kenyans to prevent the election of Kenyatta and Ruto, with the focus of maintaining the country’s foreign relations. In the event that Kenyatta and Ruto are elected, countries supporting the ICC could choose to sever diplomatic ties, leaving Kenya isolated and severely restricted in travel.

What are Kenya's treaty obligations related to holding democratic elections?

Pursuant to Chapter 1, Article 2, Clause 6 of Kenya’s constitution, international conventions ratified by the Kenyan government are binding.¹⁷ The international conventions relevant to Kenya’s electoral process are the International Covenant on Civil and Political Rights, which guarantees basic civil and political rights; the International Convention on the Elimination of All Forms of Racial Discrimination, which commits States to end racial discrimination; the Convention on the Elimination of All Form of Discrimination Against Women, which outlines a bill of rights for women; and the Convention on the Rights of Persons with Disabilities, which protects the rights and dignity of persons with disabilities.

¹⁶ International Crisis Group (2013). *Kenya’s 2013 Elections, Africa Report No°197*.

¹⁷ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 1, Article 2, Clause 6.

How was voter registration conducted? How many people were registered?

The voter registration period lasted for 30 days, from November 19 – December 18, 2012, and took place in 25,000 registration centers across Kenya.¹⁸ In order to register, a valid passport or national ID card was required. Registration was conducted with the newly-acquired biometric voter registration kits, which captured each voter's fingers, facial features, gender and photo in conjunction with his or her national ID card or passport. Overall, the Independent Electoral and Boundaries Commission registered 14.3 million voters, falling short of its goal of 18 million, but ahead of the 12.3 million voters on the 2010 roll.

Why was biometric voter registration used to create the new voter roll?

The information captured by biometric voter registration (BVR) kits is unique to each individual voter and cannot be shared. BVR also required the physical presence of each voter, which helped verify the authenticity of voters, making the process more credible. This process was unlike previous manual registration techniques where national ID cards and passports were easily forged and used by imposters. On February 12, 2013, the Independent Electoral and Boundaries Commission (IEBC) announced that it had removed 20,000 names from the register after determining individuals had registered more than once.¹⁹ The IEBC will subsequently investigate those instances to determine if a violation of law has been committed.

Can a voter who is not registered still cast a provisional ballot?

No. There is no provision for casting ballots by people who are not registered. Under Article 3 of the Elections Act of 2011, a citizen can exercise the right to vote only if he or she is registered in the voter roll.

Were voters issued a voter card during registration?

No. Registered voters were issued registration acknowledgement slips that confirmed the voter's details. Voters will not be required to produce the slip to cast a ballot in the March 4 elections. The voter must still bring either their national ID or passport – whatever identification they used to register – to the polling station in order to vote.

¹⁸ IEBC. "Voter Registration Kicks Off Countrywide." <http://www.iebc.or.ke/index.php/news-archive/278-november-2012/419-voter-registration-kicks-off-countrywide>

¹⁹ <http://elections.nation.co.ke/news/-/1631868/1692100/-/p7ni8az/-/index.html>

Was the voter roll provided for public scrutiny?

The Independent Electoral and Boundaries Commission (IEBC) opened the voter roll to public inspection for a period of 15 days lasting from January 12-26, 2013. Kenyans were able to confirm their registration details by texting an ID card or passport number to the SMS short code “15872.” Kenyans were also able to verify information by visiting their respective registration centers and the IEBC website. The name of the voter, county, constituency, ward and center in which he or she is registered were displayed on all available platforms. In the event that the details were wrong, voters were asked to visit their respective polling centers. The IEBC is expected to release the names of people who attempted to register more than once or used fake documents, and the names of those individuals will be deleted from the final list.

What does the constitution say about voting for Kenyan citizens who are residing abroad?

Clause 1(e) under Article 82 of the constitution requires Parliament to enact legislation to provide for the progressive registration of citizens residing outside Kenya, and the progressive realization of their right to vote.²⁰ Although there is a legal framework in terms of electoral law for citizens living abroad, the Cabinet, the High Court and the Independent Electoral and Boundaries Commission have all stressed the progressive aspect of the legislation throughout preparations for the upcoming general elections.

Will members of the diaspora vote in this election?

With all the discussion about reform and technology in the electoral process, many members of the Kenyan diaspora were hoping to register and vote in the March 4 election. Unfortunately, on November 27, 2012, the president’s office announced that there would be no voting for members of the diaspora due to time and logistical constraints. However, Independent Electoral and Boundaries Commission (IEBC) Chairman Isaack Hassan stated later that, along with Kenya, Kenyans residing in the East African countries of Uganda, Tanzania, Rwanda and Burundi would be able to register and cast their votes in the upcoming elections.²¹

The High Court dismissed a petition seeking a court order to compel the IEBC to register all Kenyans in the diaspora. Judge Isaac Lenaola did note the IEBC needs to implement “efficient, concrete, and realistic mechanisms, including fiscal and logistical measures, to ensure that all citizens living abroad” can participate in subsequent elections.²²

In late December 2012, the IEBC concluded a 10-day exercise of registering voters in the East African bloc of nations. The exercise resulted in only 1,700 people registered and the low turnout was attributed

²⁰ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 7, Article 82.

²¹ Wanga, J. (2012, December 2) IEBC Locks Out Diaspora Voters. *Daily Nation*. Retrieved from <http://www.nation.co.ke/News/politics/IEBC-locks-out-diaspora-voters/-/1064/1634664/-/vb1qd5z/-/index.html>

²² Judge Dismisses Suit on Diaspora Voting Rights. (2013, January 17) *Daily Nation*. Retrieved from <http://elections.nation.co.ke/news/Judge-dismisses-suit-on-diaspora-voting-rights/-/1631868/1663474/-/a8gx2bz/-/index.html>

to logistical challenges such as funding, staffing and gaining an adequate understanding of how many Kenyans reside in different areas throughout the region.²³

IFES MULTIMEDIA: Watch IFES' event entitled [The Kenya Diaspora Workshop: Considerations for Out-of-Country Voting.](#)

Will prisoners be able to cast a ballot?

Yes. Registered prisoners will be able to participate in the March 4 elections. Justice David Majanja directed the Independent Electoral and Boundaries Commission (IEBC) to enable prisoners to cast a ballot as they “have a constitutional right to vote as a vulnerable group.” Justice Manjaja also recommended that the IEBC register prisoners for future elections and referendums.²⁴

How many polling stations will there be?

There will be 24,618 polling centers throughout the country. Polling centers are often schools, churches or other community spaces. Additionally, polling centers may be subdivided or “streamed” into polling stations. For example, a primary school may have polling stations in a number of different classrooms throughout the building.

On March 4, there will be approximately 32,400 polling stations in operation by the Independent Electoral and Boundaries Commission.

How will ballots be distributed throughout the country?

Ballots will be distributed throughout the country by vehicles, airplanes and helicopters, depending on the terrain and circumstances regarding distribution.

How did the Independent Electoral and Boundaries Commission delimit constituency boundaries and then determine the placement of polling centers?

The constitution stipulates under Article 88 that the Independent Electoral and Boundaries Commission (IEBC) must delimit boundaries in such a way as to ensure that, as nearly as possible, a similar number of Kenyans reside in each of the 290 constituencies.

In doing so, the constitution allows the IEBC to take into consideration geographical features and urban centers; communities with historical, economic and cultural ties; and communication. After undertaking a massive, nationwide delimitation exercise, the IEBC submitted the new constituency boundaries to

²³ Onyango, L. (2012, December 27) IEBC Registers 2,000 in East African Bloc. *Daily Nation*. Retrieved from <http://www.nation.co.ke/News/politics/-/1064/1652458/-/ahslau/-/index.html>

²⁴ Okumu, E. (2013, January 21). Court Directs IEBC to Allow Registered Prisoners to Vote. *The Star*. Retrieved from <http://www.the-star.co.ke/news/article-103756/court-directs-iebc-allow-registered-prisoners-vote>.

Parliament in early 2012. There were approximately 100 challenges made to the High Court regarding these boundaries, some of which challenged the geographical distance and ethnic makeup of the constituencies. After the High Court's review, all of the 290 constituency boundaries delimited by the IEBC were kept unchanged and the process by which the boundaries were created was declared transparent and in line with the rules governing the IEBC's task.²⁵

Additionally, under Regulation 7 of the Elections (General) Regulations 2012, the IEBC was then able to determine the number of polling stations and their respective locations throughout the country, while taking into consideration geographical issues, accessibility for persons with disabilities or special needs, population and other factors that may impact people on Election Day. The IEBC was then required to publish in the *Gazette* and various other electronic and print media specifying the location of polling centers for each constituency. The IEBC does have the power to alter the number and location of polling centers in the future, but is required to publish a notice in the *Gazette* no later than three months before the date of any election.

What efforts have been made to ensure the physical safety of Kenyans who want to vote?

Approximately 90,000 police officers will be deployed during the March 4 elections with one or two police officers positioned at each polling station, and added reinforcement in violence-prone areas. To further reduce the risk of violence, voters will not be allowed to assemble outside polling stations after casting their ballots.²⁶

What percentage of the Kenyan population has some form of disability and what provisions have been made to make this election accessible?

It is estimated that 3.5 million Kenyans live with a form of disability.²⁷ In this election, voters who are illiterate or disabled can receive assistance when casting their vote. As defined by Article 260 of the constitution, the term "disability" includes "any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities."²⁸

If a person is not able to vote in the manner prescribed by the election regulation for reasons such as disability or illiteracy, the voter may be assisted by a person of his or her own choosing, unless the person chosen is a candidate or polling agent. The person chosen by the voter is not required to be qualified to vote, but must meet the requirement of being at least 18 years of age. If the voter is not accom-

²⁵ It is worth noting that the High Court did alter some boundaries at the ward level. These often had to do with geographical size, location, distance or, in an interesting case, the boundary name.

²⁶ Menya, W. (2013, February 20). IEBC Defends System for Transmitting Poll Results. *The Star*. Retrieved from <http://allafrica.com/stories/201302201493.html?viewall=1>

²⁷ Kenya Disability Newsletter. (November 2009) Retrieved from http://www.africacampaign.info/uploads/media/kenya_disability_newsletter__2nd_issue_.pdf

²⁸ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 17, Article 260.

panied by a person who is qualified to assist them, the presiding officer will assist the voter in the presence of polling agents. All persons who assist a voter must make a declaration of secrecy before the presiding officer; is subject to a penalty for breaching the declaration of secrecy; and is limited to assisting a single voter at the election.²⁹

How does a polling station official determine whether a voter is entitled to assistance?

The presiding officer may make a respectful inquiry in order to establish that the voter and the person of assistance he or she has chosen satisfy the requirements of assisted voting. If the request for assistance is granted, the presiding officer will record, by the voter's name, that the voter was assisted and the reason for the assistance in the polling station register.³⁰

What issues have women faced in trying to ensure their inclusion in the political process?

The passage of the 2010 constitution brought forward a progressive framework for greater representation of women in the political process. Article 81(b) of Kenya's new constitution states that "not more than two-thirds of the members of elective public bodies shall be of the same gender."³¹ This stipulation requires all government bodies, whether elected or appointed, be made up of at least one-third women. However, the full implementation of that law, particularly as it relates to the National Assembly and county assemblies, was delayed. The impasse was the result of Parliament's inability to determine how the one-third gender requirement would be met in a legislature that is elected in single-member districts in a highly patriarchal society.

For example, the National Assembly would need to seat 117 women in the 350 member body to satisfy the constitution's gender requirement. By law, there are already 47 seats set aside specifically for women. The law is silent on how it would ensure that at least 70 more seats would be filled by women under the single-member, FPTP system. Not only is 70 an unlikely number of women to be voted into office without special provisions ensuring their representation, but it would also threaten the seats of the same parliamentarians writing and voting on the law. No bill has yet been passed.

Kenya's Supreme Court ruled on December 11, 2012, that the constitutional provision stipulating a mandatory one-third gender representation would need to be progressively implemented by August 2015 and would not apply to the upcoming March 4 general elections. As a result, many activists feel a sense of betrayal and disappointment over a constitutional right that is not being implemented. Additionally, the Independent Electoral and Boundaries Commission (IEBC) also issued a nomination fee for women of 500,000 Shillings (approximately \$5,730 USD). This fee elicited widespread protests. The

²⁹ Independent Electoral and Boundaries Commission. *Elections Manual 2013*. Page 25.

³⁰ The Government of Kenya. (2012) *The Election (General) Regulations, 2012*. Article 72, Clauses 3 & 6.

³¹ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 7, Article 81.

IEBC eventually reduced the nomination fee for women, youth and persons with disabilities to 250,000 Shillings (approximately \$2,865 USD). Even this reduced fee locks out many prospective female candidates from political races and the subsequent political offices.

IFES MULTIMEDIA: Watch IFES' event on [Empowering Women in Kenya: A Conversation with Advocate Maimuna Mwidau](#).

How many poll workers are employed by the Independent Electoral and Boundaries Commission?

There will be approximately 265,000 poll workers hired by the Independent Electoral and Boundaries Commission on a short-term contractual basis.

What are the steps for voting?

The first step entails a polling station clerk checking to ensure that voters have brought the identification documents they used to register and then directing the individual to their polling area. The second step requires the voter identification clerk to verify the voter's registration status using either a biometric verification device or a hard copy of the voter list. Once the voter is cleared and in the correct polling station, the voter will be issued six individual ballot papers. A voter will then mark their ballot papers and place his or her votes into the ballot boxes, which correspond to the six different races. The voter will then dip their left small finger into indelible ink and leave the polling area.

Will voters use any form of electronic voting?

No. Voters will cast their vote using paper ballots just as they did in the 2010 Referendum and any by-elections since then. Once the voter has marked their ballot, they will then put them into ballot boxes. Electoral laws and regulations allow the Independent Electoral and Boundaries Commission (IEBC) to introduce electronic voting into the process, but the IEBC will not do so for the 2013 general elections.

What technology will be used during the March 4 election?

There will be two pieces of technology used on Election Day. First, when the voter reaches his or her polling station, they will be required to provide a fingerprint in order for the Independent Electoral and Boundaries Commission (IEBC) official to identify them using the electronic voter identification device (an electronic poll book). Then, after polls have closed on Election Day, IEBC officials will use mobile handsets to communicate provisional results from the polling center to the constituency, county and national tally center.

What if a voter's fingerprint is not found on the electronic voter identification device?

If a voter's fingerprint cannot be found, the Independent Electoral and Boundaries Commission official can enter the voter's national ID number or passport number into the electronic voter identification de-

vice and search for their details manually. If the voter's record is found, they will then be cleared to vote.

If this method does not work, the hard copy of the voter register is based on the same data. Each polling station has a hard copy of the voter register and the presiding officer may check to see if the voter's name is on this list. If it is, and if the voter has their national ID card or passport, then they will be allowed to vote. If their name is not on the list, they will not be allowed to vote.

Who will monitor the Kenyan elections?

The March 4 election will be monitored heavily by both domestic and international observation missions. These monitors will help ensure a credible, transparent and fair voting process. The Independent Electoral and Boundaries Commission (IEBC) said there will be at least 1,000 international observers, which will supplement efforts by approximately 10,000 local observers across the country.³²

The Elections Observation Group (ELOG) will lead the domestic monitoring effort. ELOG is a group of Kenyan civil society organizations that have joined together to coordinate their observation efforts. ELOG will also undertake a parallel vote tabulation, which will help corroborate or question the official results announced by the election commission. On the domestic front, political parties will likely have polling station agents throughout the country.

Internationally, there will be a number of groups observing the election process. The Carter Center will help monitor the elections. This institution has established a field office in Nairobi and will release periodic statements concerning electoral findings, which will be available to the public at www.cartercenter.org. There will be a European Union election observation mission that will consist of approximately 70 observers who will be deployed throughout the country. A core team of 10 election experts arrived in Kenya on January 19 and has since met with officials from the IEBC, the Inspector General of Police, the Registrar of Political Parties and political party leaders. Additionally, the African Union and the East African community also plan to monitor Kenya's elections.

What time do polling stations open and close on March 4?

Polling stations will open for voting at 6:00 a.m. and close at 5:00 p.m. Voters who are in line by 5:00 p.m. will be allowed to vote. Additionally, the Independent Electoral and Boundaries Commission may extend voting hours for polling stations that do not open on time.

How will election disputes be adjudicated?

A key factor of the 2007 post-election violence was the lack of credible dispute resolution techniques. Kenya's new constitution mandates that the commission settle all electoral disputes, excluding election

³² Odula, T. (2013, January 28). Kenya Elections Observers to Enhance Transparency. *Associated Press*. Retrieved from <http://news.yahoo.com/kenya-elections-observers-enhance-transparency-103508146--politics.html>

petitions and disputes subsequent to the declaration of election results.³³ Moreover, the Elections Act 2011 offers a comprehensive list of electoral offences, and the Independent Electoral and Boundaries Commission has authority to pursue action against those who commit those offenses. Disputes that arise following the announcement of results will be directed to the high courts in the case of county and parliamentary polls or to the Supreme Court in the case of a presidential contest.

What are the laws governing political parties?

The Political Parties Act 2011 was enacted by Parliament to provide for the registration, regulation and funding of political parties. All political parties were required to seek fresh registration by April 30, 2012, and any party that failed to meet the deadline risked deregistration. This has marked a major shift in the legal framework for elections because political parties in Kenya have long been brokered among ethnic lines, which played an integral role in the 2007 post-election violence. The Political Parties Act was implemented to address this problem and provide an opportunity to reshape Kenya's political landscape.

How, when and where will the results be counted and transmitted?

As in previous elections, the ballots will be counted by the Independent Electoral and Boundaries Commission (IEBC) polling station staff at the polling station after the polls close, in the presence of the party and candidate agents and observers. The IEBC has a results management system (RMS) that involves separate communication channels for both provisional and official results.

Once the presiding officer has completed the count for each race (presidential count is first; the other ballots will be counted in the order prescribed in the regulations) and completed the official polling station results form, he or she will then use a General Packet Radio Service-enabled mobile phone handset to securely transmit the provisional results from the polling station to tally centers at constituency, county and national levels. This system, a component of the RMS, is the results transmission system (RTS), and is an evolution of the system used by the IEBC with success for the 2010 referendum and subsequent by-elections. The 2013 RTS has been modified to handle the six elections scheduled for March 4, to increase the level of security used (polling station specific user authentication and encryption are just two of the added security features) and improve reporting and presentation of results. On receipt of provisional results, the IEBC will make these available for stakeholder scrutiny at the tally centers. IEBC has also partnered with Google to make results available online.

In the meantime, paper forms with the official results are taken, in tamper-evident envelopes, to the relevant tally center and handed to the returning officer (RO). The RO will check the official results and consolidate with results from other polling stations. The RO will also enter the official results into the IEBC's RMS where they will be validated and checked against the provisional results.

The separate channels for communication of provisional results and official results provide for greater confidence in the accuracy and integrity of all results. Moreover, the electronic transmission of provi-

³³ The Government of Kenya. (2010). *The Constitution of Kenya, 2010*. Chapter 7, Article 88.

sional results delivers the timely reporting of information. Additionally, given the scale and complexity of the elections (six ballots, six counts, six forms, six transmissions of provisional results per polling station), it is important to have realistic expectations of when the first provisional results will be received.

When are the results final?

In accordance with Article 39 of the Elections Act, the Independent Electoral and Boundaries Commission (IEBC) will determine, declare and publish the results of the general elections after the polls close. The chairman will have the responsibility to announce the results of the various elections, as submitted by the returning officer. Before determining and declaring the final results, the IEBC may announce the election's provisional results, which should be announced in the order in which the tallying of the results is completed.³⁴

Is there anywhere where I can see a map of the election results?

The Independent Electoral and Boundaries Commission (IEBC) has teamed up with Google to provide a detailed and interactive map to view polling stations and real time results. It also includes a portal for voters, campaigners, journalists and other interested parties to locate information regarding the upcoming elections. The platform, found at <http://www.google.co.ke/elections>, will keep people informed throughout the electoral process. Additionally, the IEBC has their own platform at <http://www.vote.iebc.or.ke> for people to view their polling station location and registration status.

What social media outlets do the Independent Electoral and Boundaries Commission use to reach out to the media and Kenyan citizens?

The Independent Electoral and Boundaries Commission (IEBC) currently uses Facebook, Twitter and YouTube as mediums to connect with citizens, particularly younger, more tech-savvy youth. The relevant links to those websites are below:

- Facebook <http://www.facebook.com/IEBCpage>
- Twitter <https://twitter.com/IEBCpage>
- YouTube <http://www.youtube.com/user/IEBCpage>

³⁴ *The Elections Act No. 24 of 2011*, Article 39.

Resources

- [The Independent Electoral and Boundaries Commission](#)
- [The Constitution of Kenya, 2010](#)
- [Google Election Hub](#)
- [IEBC Facebook Page](#)
- [IEBC Twitter Page](#)
- [IEBC YouTube Page](#)
- [IFES' event *Kenya Elections: Building a Peaceful, Credible Political Process*](#)
- [IFES' event *The Kenya Diaspora Workshop: Considerations for Out-of-Country Voting*](#)
- [IFES' event *Empowering Women in Kenya: A Conversation with Advocate Maimuna Mwidau*](#)
- [International Crisis Group, Kenya's 2013 Election](#)