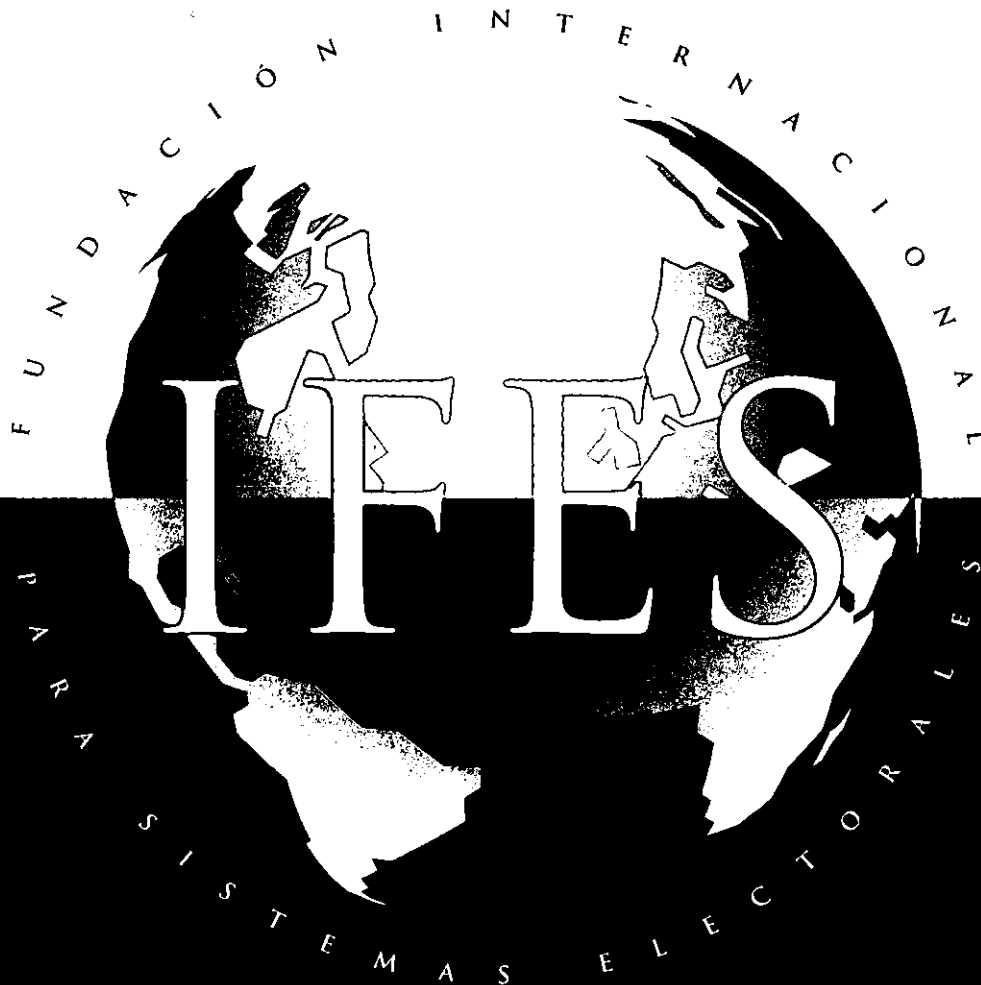


Date Printed: 11/18/2008

JTS Box Number: IFES_6
Tab Number: 25
Document Title: Toward Credible and Legitimate Elections
in Kenya: Part II, IFES Assessment Report
Document Date: 1997
Document Country: Kenya
IFES ID: R01691



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**TOWARD CREDIBLE AND LEGITIMATE
ELECTIONS IN KENYA: PART II
IFES ASSESSMENT REPORT**

May 1997

Joel D. Barkan

Robert E. Henderson

This assessment report has been made possible through funding from the United States Agency for International Development. Any person or organization is welcome to quote information from this report if it is attributed to IFES.

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EXECUTIVE SUMMARY

This is the third assessment of Kenya's electoral process conducted by the International Foundation for Electoral Systems (IFES) since 1992, and is to be read as an update to its second report of April, 1996. The purpose of the assessment is to determine the status of Kenya's electoral system immediately prior to the start of a sequence of events that will culminate with the holding of Kenya's second multi-party elections since its return to multiparty politics in 1991. These elections will be held sometime during the second half of 1997. Like the second assessment, the objectives of the mission were to assess the current electoral environment, enumerate the constraints to free and fair elections, and recommend steps to eliminate those constraints. The assessment was funded by the United States Agency for international Development (USAID).

The international context for this year's multiparty elections in Kenya is different from that which shaped the elections of 1992, but the domestic context remains fundamentally unchanged. Domestically, Kenya's political environment is the proverbial glass of water that is simultaneously "half-empty" and "half-full." Though multi-party politics appears to an established fact, and while Kenya is a far more open polity than in the era of one-party rule, Kenya is not yet a democracy and its process of democratization appears to be stalled:

- There is a continued stalemate between a government elected by a minority of the electorate and a divided opposition. The government has yet to publicly acknowledge that in an emergent democracy, it must recognize, respect and compromise with an opposition that obtained nearly two-thirds of the vote in the last election.
- The opposition continues to be divided amongst itself. Its principal elements are seemingly unable to bargain and compromise with each other or with the government. The opposition parties are also weak and undeveloped in respect to their capacity to perform the basic functions that political parties perform in a democracy; namely, to recruit and elect candidates for public office, and to articulate a clear program of public policy for the country in which they exist.
- As Kenyans prepare for the forthcoming elections, all major political parties are intending to contest the elections. None contemplate boycotting the election at this time.
- Notwithstanding their intention to contest the elections, opposition parties do not face a "level playing field." Government harassment of the opposition, including restrictions on the freedom of movement by opposition leaders and the freedom of assembly by opposition supporters, appears to be rising as the elections approach. As in 1992, the Provincial Administration, which is under the direction of the Office of the President, is the principal instrument for such restrictions.
- The level of political violence, including police attacks on opposition leaders is rising. While different in form, this violence resembles the violence that occurred prior to the

1992 elections in that its sole purpose is to intimidate the opposition.

- Civil society is larger, more robust and more focused than in the early 1990s. Several Kenyan NGOs are engaged in programs of civic education and are planning programs on voter education. Plans by some of these organizations for the recruitment, training and posting of domestic monitors at most polling stations for the forthcoming elections are more advanced than in 1992. At the same time, the Government of Kenya remains openly skeptical about the intentions of these organizations, and has begun, via the Provincial Administration, to curtail the activities of some organizations.
- The reemergence of a free press is one of the most important features of Kenyan political life. Open harassment by the government of the press has largely ceased, but subtle forms of harassment continue.

The Electoral Commission, supported by the Provincial Administration, is the main government agency responsible for the administration of elections. Its status, and its preparations for the elections are as follows:

- The reputation of the Electoral Commission has risen as a result of the competent and efficient manner in which it has administered roughly 30 by-elections since the last general elections.
- Notwithstanding Commission's deserved reputation for administrative competence, many Kenyans do not regard the Commission as an independent, non-partisan and impartial institutions, because all of its members continue to be appointed by the Office of the President. The reappointment of the Chairman of the Commission, Justice (Rtd.) Z.R. Chesoni, at the end of his term in September, 1996 has reinforced this perception.
- In an effort to make the electoral process more accessible to Kenyan citizens, the Electoral Commission intends to significantly increase the number of locations at which Kenyans may register to vote. For the same reasons, the number of polling places will be increased from 9,000 at the last general election to 12,500.
- The Electoral Commission, together with the Attorney-General, is currently engaged in a potentially significant effort to recodify and consolidate legislation pertaining to the administration of elections. If ultimately enacted, this legislation would increase the authority of the Commission to deal with grievances arising during the nomination and campaign periods, and give the Commission authority over the Provincial Administration, public security officials, political parties and candidates with respect to the regulation of campaign activities. Such legislation could result in a freer and more "level playing field" as well as more orderly campaigns. However, the proposed legislation would not give the Commission the authority to register political parties, a power that will remain with the Registrar of Societies.

- There are serious concern on the part of many Kenyans as to whether the requirements for becoming a registered voter will enable all citizens who wish to participate in the forthcoming elections will be able to do so. The requirement that Kenyans obtain a new national identification card prior to registering to vote, is regarded by many Kenyans and by the IFES Team as inconsistent with the Constitution of Kenya, and an unnecessary impediment to the voting process. If valid, alleged delays in the issuance of the new identify cards, constitute a further impediment to the right to vote.
- The Electoral Commission intends to computerize the national register of voters by engaging a local Kenyan firm to design and implement an information system for this purpose, and has issued tenders for two contracts for this exercise. Given that the registration of voters will commence May 19th, it is the opinion of the IFES team that any attempt to computerize of the register at this late date will be fraught with considerable risk. Computerization of the registration process usually takes two to three years to perfect, though a basic system could be established in six months. Given these realities, it is important that Commission embark on computerization in as transparent manner as possible.
- In contrast to the approach taken in 1992, the Electoral Commission and the Government of Kenya intend to fully finance the cost of the 1997 general elections, and not rely on donor support. Although there has been some discussions with several donors about the provision of technical and material assistance to the Commission, these discussions are not continuing at the present time. The decision by the Commission and the Government to finance the computerization of voter registration and not implement previous agreement with the United Nations Development Programme for support in this area, illustrates the current thinking regarding donor assistance.
- The Electoral Commission, in accordance with the Constitution of Kenya, carried out a review and redemarcation of the boundaries of Kenya's legislative constituencies that it announced in September, 1996. In the process, the number of number of districts was increased from 188 to 210. The resulting demarcation appears to greatly favor the ruling party KANU though perhaps to a somewhat lesser extent than the prior demarcation. The number of registered voters per constituency varies greatly with the result that residents of some areas are significantly over-represented while others are under-represented. Residents of Nairobi were not provided with any additional constituencies even though the city's population has increased more rapidly than the country as a whole.
- The counting of ballots for the general elections will continue to be done at a single counting station established in each constituency rather than at the polling station. The continuation of this procedures is unlikely to reduce suspicion that boxes may be tampered with, switched or lost, en route to the counting station.
- The Electoral Commission has established a dialogue with NGOs engaged in civic education and NGOs intending to monitor the forthcoming elections. This dialogue is

a welcome development and is likely to eliminate tensions that existed between the Commission and the NGO community in 1992. Several NGOs have offered to work directly with the Commission to implement a nationwide process of voter education, but whether the Commission will enter into such a partnership has not yet been determined.

- The Commission would increase the transparency of the electoral process and build confidence among the contesting parties if it established an Inter-Parties Advisory Council or a Consultative Committee on Presidential Campaigns similar to the forums established by the electoral commissions in Ghana and Uganda for their recent elections. The IFES team was encouraged by the willingness expressed by the Chairman of the Electoral Commission to consider this procedure.

As in 1992, the forthcoming elections in Kenya will attract wide interest from the international community. The international context, however, is different. In 1991, prior to the return to multiparty politics in Kenya, the principal providers of foreign assistance to Kenya suspended \$350 million in "quick-disbursing" aid pending macro-economic and political reform. Although the 1992 elections were contested on a multiparty basis, the suspension of non-project assistance continued until early 1995, and then at reduced levels. In the meantime, the Government of Kenya, embarked on a series of macro-economic reforms that has led to renewed growth of the Kenyan economy.

- Because Kenya has met most donor conditionalities for macro-economic reform and some for political reform, the suspension of "quick-disbursing" aid was lifted early in 1995. The amount and necessity for such assistance, however, has dropped significantly since the previous election. As a result, the Government of Kenya is less likely to respond to concerns expressed by the donor community regarding the conduct of this year's elections than it was in 1992. The changing international context also explains the decision by the Government to fully finance the elections on its own.
- The role of the donor community will be largely limited to supporting Kenyan NGOs engaging in civic and voter education, and to supporting NGOs intending to monitor the elections. As in 1992, the level of support provided by the donors to these organizations is likely to be significant and broad based.
- The donor community intends to closely monitor the course of the electoral process from registration through the counting of the ballots on election day, and may periodically issue statements on the conclusions it draws from this exercise.

The IFES team concludes that while Electoral Commission has taken several significant steps to achieve a general election that is credible and legitimate in the eyes of most Kenyans, serious impediments remain to the realization of this goal. The 1997 team reaches the same conclusion as that expressed in the second IFES report; that the Government of Kenya bears primary responsibility for the establishment of an environment

that would result in credible and legitimate elections, and that such an environment does not yet exist in Kenya. Moreover, the team is troubled by the rising level of political violence, and by the increasing restrictions on opposition political leaders and NGOs by the members of the Provincial Administration and the police. These developments undermine the prospect for legitimate elections as well as the overall process of democratization.

I. INTRODUCTION

A. Background and Context of the Assessment Mission

This assessment is the third conducted by IFES in Kenya since 1992, and is a follow-up to the second assessment conducted in March 1996. In September 1995, the Electoral Commission of Kenya requested the USAID mission in Kenya to facilitate the return of IFES to assess the Commission's needs with the view towards assisting the Commission in its planned computerization of voter registration for general elections expected during the second half of 1997. IFES had assisted the Commission by conducting a detailed review of the Commission's operations prior to the general elections of 1992, Kenya's first multiparty elections in 29 years. The first IFES assessment became the basis for donor assistance to the Electoral Commission in 1992. The then and present chair of the Electoral Commission, Justice Z.R. Chesoni, found the first report of value and sought a new assessment.

In response to the request for a second assessment, IFES, with support from the USAID mission in Kenya, mounted a four person, three week assessment of preparations for the 1997 general elections. The assessment included a review of voter registration, including the potential for creating a computer-based register of voters, the Commission's plans for the elections, and potential donor responses. The 1996 assessment included a review of the overall political climate in Kenya, particularly the prospects for a "level playing field" for contesting candidates and political parties. The report also contained several recommendations for actions to be taken by the Electoral Commission, the Government of Kenya, political parties and NGOs, to overcome weaknesses in the electoral process that occurred in 1992; weaknesses that are likely to undermine the legitimacy of the 1997 elections if they are repeated.¹ The 1996 IFES assessment was thus broader in scope than the Foundation's 1992 report in that it was not limited to a review of administrative and technical preparations for the elections. Like the first study, the second has become a benchmark for organizations and individuals seeking to understand the status of preparations for the second round of multiparty elections in Kenya's ongoing transition to democracy.

In February 1997, the USAID Mission in Kenya asked IFES to update the 1996 assessment by conducting another review of the preparations for the 1997 elections. In response, IFES sent a two-member team to Kenya consisting of a political scientist and a specialist in election administration. The 1997 two-member team arrived on March 20th

¹ For a discussion of these shortcomings in the electoral process see (IFES 1996; IRI 1993 and NEMU 1993)

and stayed through March 29th. Because the team was charged with updating the 1996 report, the present report carries the same title of the IFES report of 1996 with the subtitle "Part II." The present report should thus be read in conjunction with last year's report.

The context of the forthcoming Kenyan elections including the perspectives of the donors, and the approaches taken by the Electoral Commission and the Government of Kenya (GOK) concerning technical assistance to the Commission, have all evolved considerably since the return to multiparty elections in 1992. Particularly significant is the fact that relations between the GOK and the community of democracy minded donors in 1997 reflect the absence of macro and micro-conditionality for donor assistance that marked GOK-donor relations in 1992 and throughout the first half of the 1990s.

Donor conditionality for foreign assistance, particularly "quick-disbursing" aid, provided much of the context for the 1992 elections. At the annual meeting of the Consultative Group (CG) for Kenya held in Paris in November, 1991, the donor community, led by the democracy minded bilateral donors,² suspended \$350 million in "quick-disbursing" aid pending macro-economic and political reform by the Government of Kenya.³ The suspension led to a protracted period of negotiation between the donor community and the GOK on the modalities for a structural adjustment program that culminated in the resumption of aid by the IMF, World Bank, and selected bilateral donors in March of 1995. During this period, beginning in 1993, the GOK began to take steps to reduce its budgetary deficits, to limit the money supply, end exchange control, phase out its policy of import and export licensing, and to initiate a modest program of privatization. Tentative steps were likewise taken to liberalize agricultural markets to stimulate the production of both food grains and Kenya's traditional exports of coffee and tea. Less promising was the Government's record at reducing corruption, a serious problem that has made Kenya relatively unattractive to foreign investors.

¹ The "democracy minded" donors are those donors which provide some form of programmatic support to countries making a transition from authoritarian to democratic rule. Many of these donors coordinate their activities in those countries where they seek to assist democratic transitions. Donors with the most comprehensive bilateral programs to support democratization include Canada, Denmark, Germany, the Netherlands, Norway, Sweden, and the United States. Some countries as well as several multilateral donors (e.g. Japan, the United Kingdom, the European Union, UNDP, the World Bank) prefer to describe these programs in terms of supporting "good governance" rather than democratization. In Kenya, the aforementioned donors currently coordinate their activities in this area as participants in the Donors' Development Democracy and Governance group (DDDG) which meets periodically at the Canadian High Commission.

² "Quick-disbursing" aid consists primarily of cash transfers by bilateral and multilateral donors to subsidize budget deficits and current account deficits incurred by the recipient country. Quick-disbursing aid should not be confused with project lending. Although quick-disbursing aid was suspended to Kenya from November 1991 to March 1995, project lending was not.

The suspension of quick disbursing aid also triggered significant political reforms, but not a full transition to democracy. In December 1991, the Kenya National Assembly repealed Section 2A of the Kenyan constitution making Kenya a one-party state. Approximately a dozen political parties were subsequently registered prior to the 1992 elections. The elections, which were held on December 29th resulted in the reelection of President Moi, but with only a plurality of 36% of the vote. Legislative candidates of the President's ruling political party, KANU, won 100 of the 188 seats in the National Assembly, but again with barely 30% of the votes cast. The return to power by KANU was largely a function of opposition supporters splitting their votes among the three largest opposition parties--Ford-Asili, Ford-Kenya and the Democratic Party.⁴

Conditionality and the suspension of quick-disbursing aid also led to a measure of political liberalization in Kenya not witnessed since the 1970s, and the rebirth of a free press and civil society, including the emergence of several organizations, particularly the NEMU, that monitored the 1992 elections. More than 250 international observers also converged on Kenya from the countries of the democracy minded donors to witness the elections. Political liberalization and the return to multiparty elections in Kenya, however, were mainly responses to increasing demands by Kenyans themselves for an end to authoritarian rule. While the donors' suspension of quick-disbursing aid was a contributing factor to the process of both political and economic liberalization, the initial demands for reform came from *within* Kenya.

The international context for this year's elections is very different. The resumption of quick-disbursing aid by the IMF and World Bank combined with the fact that most bilateral donors (with the exception of Japan) no longer provide quick-disbursing aid in any significant quantity, has freed both the Electoral Commission and the Government of Kenya from responding to donor concerns about weaknesses in the overall environment in which the elections will be held, or about specific aspects of the administrative preparations and procedures adopted for the elections. These fundamental differences between 1992 and 1997 influence every aspect of the democratic development initiatives among all principal actors: The Electoral Commission, the Government of Kenya, political parties, Kenyan and international NGOs, and the donors.

In 1992, IFES undertook a review of the administrative preparations for the general elections at the invitation of the Electoral Commission, and made a series of recommendations that were well received by the Commission. A number of these recommendations were later adopted. By contrast, the IFES report of March 1996 was received by the Electoral Commission without comment. As the chairman of the

⁴For an analysis of the outcomes of the 1992 general elections see (Barkan 1993; and Throup and Hornsby 1997)

Commission, Justice (Rtd.) Z.R. Chesoni told the 1997 assessment team: "The U.S. Embassy asked for our comment on the 1996 Report. We consider this report and the views of IFES to be their own. We have no comment." The reticence of the Commission to respond to the 1996 Report may reflect the report's broad scope.

It would also appear that the Government of Kenya has decided to provide sufficient financial and material support to the Electoral Commission, with or without assistance from donors. As stated clearly to the members of the assessment team by Chairman Chesoni:

"It is incumbent on the Treasury to provide the funding for the Electoral Commission. We submit our budget informing them how much it will cost to conform to our Constitutional requirements for an election and they are bound to provide the necessary funds. Where they get those funds is up to them, particularly if they want to approach the donor community. Quite frankly, Kenyan taxpayers would not be expected to support the elections in Tanzania and we Kenyans should not expect the taxpayers of other countries to support our elections."

The result is that the Electoral Commission and the Government of Kenya are unlikely to request donor assistance to support the elections at the same level as occurred in 1992 if at all. Donors previously approached by the Commission for assistance may or may not hear further from the Commission. For example, while the Commission had previously entered into an agreement with the United Nations Development Programme (UNDP) for assistance to support the computerization of voter registration, and while a UNDP trust fund created for this purpose had financed a feasibility study of the requirements for this project, the Commission published a tender for bids for the project without informing the UNDP of its intentions to proceed independently and apparently without UNDP support.⁵

Several donors, including the United States, have also made decisions not to assist the electoral process or to limit their support to Kenyan NGOs with programs for domestic monitoring and/or civic education. The U.S. Government through its Embassy and USAID concluded in September, 1996 that the reappointment of four members of the Electoral Commission (including its chairman) and the appointment of five new members, did not sufficiently address the concerns expressed by IFES in its 1996 report about the need for broader-based and independent Commission. The new appointments reflected

⁵ See tenders by the Electoral Commission in the *Daily Nation* and *Standard* newspapers of March 26th and March 27th of this year (EC 1997). The action also apparently violates UNDP "performance criteria" for obtaining such support.

again the narrowness of representation from across the Kenyan political spectrum that had characterized the membership of the outgoing commission.

Given these circumstances, the Electoral Commission was generous with its time and spent over three hours with the assessment team in an in-depth review of its preparations for the elections, including a discussion of the computerization of the voters' register, the reform and consolidation of the electoral law, and especially the importance of sovereignty and independence of action required to implement sound electoral processes in the dynamic environment of a transitional political culture. Although a request was made in person and in writing to meet with the senior technical staff to discuss the details of the preparations for the forthcoming elections, time and opportunity did not permit this discussion. The Commission had been informed of the impending arrival of the assessment team the week prior to the assessment, but no appointment was scheduled. Most interviews for the assessment were also conducted during the week of the Good Friday holiday, a four day work week in Kenya. As a result, the findings in this report on status of the Commission's preparations are based on one lengthy meeting with the Commission on March 25th, and on second hand reports from other sources.⁶

B. Objectives

In updating the 1996 Assessment, IFES was responding to a request by USAID through its Indefinite Quantity Contract mechanism to assess the voter registration and pre-election issues and problems in Kenya. The audience for this report remains essentially the same as in 1996:

“IFES (is) cognizant of the concerns of Kenyans and of donors, including USAID, regarding the general electoral environment and the impediments, both actual and potential, to free and fair presidential and parliamentary elections... (This update of) the assessment report has a domestic audience: the Electoral Commission, the Government and the people of Kenya, and an international audience: the donor community, especially the U.S. Government and USAID.”

The specific objectives of the 1997 mission and report, however, are to assess the prospects and requirements for genuinely competitive and legitimate elections, particularly those requirements that are appropriate and feasible to address given whatever time remains before the elections including:

* See section III.E below for the assessment of the status of the computerization of the voter register under UNDP's Programme Support Implementation Arrangement (UNDP 1995).

- the most relevant requirements as set forth in the 1996 IFES report together with a realistic appraisal on their likelihood of implementation, based on what has and what has not been accomplished since the IFES report of a year ago;
- the capabilities of the Electoral Commission to oversee the 1997 elections, with emphasis on its institutional capacity and independence;
- the recent demarcation of constituency boundaries providing for an additional 22 legislative districts, and its significance for the realization of the principle of equal representation;
- the status of the registration process including the intent to computerize the national register of voters;
- the prospects that the forthcoming elections will be contested on "a level playing field," including consideration of freedom of assembly, movement, speech, and media access;
- the likely roles to be played by Kenyan NGOs during the forthcoming elections; and,
- the likely contributions to be made by the donor community.

C. The IFES Assessment Team

The IFES assessment team was composed of two specialists on African politics with extensive experience in elections, and democratic development programming.

Joel D. Barkan is Professor of Political Science at the University of Iowa. He has followed Kenyan politics in over 30 visits since 1962, and published several articles on elections and electoral behavior in Kenya. In 1992 and 1993 he served as the first Regional Democracy and Governance Advisor for East and Southern Africa to the United States Agency for International Development during which time he advised both the Agency and the donor community on the modalities for the 1992 Kenya general elections. Dr. Barkan has also served as an international observer of elections in Ethiopia, Kenya, Tanzania and Uganda.

Rob Henderson is the Senior Program Manager in Democratic Development for the Institute of International Education in Washington, D.C. Since 1979, he has observed or helped administer over 30 international elections on five continents. Prior to his present position, Mr. Henderson was Vice-President for Programs at the International Republican

Institute for seven years (1984-91). In 1992, he was the Senior Consultant to the International Republican Institute for the Institute's international observer mission for the Kenya general elections. Since 1993, Mr. Henderson has served as the UNDP Chief Technical Advisor to the Electoral Commission of Uganda for the Constituent Assembly, presidential, specialized bodies, and parliamentary elections.

D. Methodology

IFES was founded in 1987 with the purpose of providing election assistance to countries seeking to strengthen electoral practices for development of their democracy. IFES's experience in transitional and other elections around the world has reinforced the insight that all electoral environments are less than perfect, and that improvement in electoral performance is necessary, important and possible...in all countries.

Internationally accepted standards, however, for legitimate and credible elections do exist. While *no* country conforms perfectly to these standards they do serve as guideposts for every political system seeking to strengthen its democratic electoral performance. This 1997 update of the 1996 IFES report uses the accepted standards found in Guy Goodwin-Gill's *Free and Fair Elections: International Law and Practice*, published by the Inter-Parliamentary Union (Goodwin-Gill, 1995). The report builds on the comprehensive review of these standards contained in the 1996 report, and limits itself to critical areas for recommendations.

The IFES team met with nearly fifty individuals during its stay in Kenya including the Chairman and Deputy Chairman of the Electoral Commission. The team also met with parliamentary leaders of both the governing and opposition parties, representatives of NGOs active in election monitoring and civic education, eminent Kenyans and with representatives of selected diplomatic missions. The team consulted with long time observers of politics in Kenya including members of the press, academic and public policy analysts, businessmen and other professionals. Due to the Good Friday holiday and the fact that he was out of the country until the Wednesday before the holiday, the team was unable to discuss status of the proposed revisions and consolidation of electoral laws with Attorney General Amos Wako. Nor was the team able to discuss the position of the Government of Kenya with respect to the hosting of international observer missions for the forthcoming elections with the Permanent Secretary of the Ministry of Foreign Affairs, Dr. Sally Kosgei.

The IFES team did meet with the Donors Development Democracy and Governance group (DDDGG) to discuss election preparations and the form and substance of their likely support. The DDDGG also explored the respective roles and logistical

relationships that exist between domestic election monitors and international election observers. The relationship between international observers and the diplomatic community was also discussed.

Prior to the departure of the assessment team from Kenya on March 29th, the team presented its principal findings in the course of oral briefings to Ambassador Prudence Bushnell and the members of the political section of the U.S. Embassy and to George Jones and Lee Ann Ross, the director and assistant director of USAID Kenya. We wish to thank everyone contacted during this assessment for their support and time. Special thanks go to George Jones, Lee Ann Ross, Nancy Gitau, Esther Muchiri, and Tom Wolf of USAID, and to Timberlake Foster, Lucien Vandembroucke, and Chris Berlew of the U.S. Embassy for their hospitality and interest in the success of this mission. We also appreciate the critical assistance provided by Keith Klein, Laurie Cooper and Laila Macharia at IFES.

II. CHANGES IN THE KENYAN POLITICAL LANDSCAPE SINCE THE GENERAL ELECTIONS OF 1992 AND THE IFES ASSESSMENT OF MARCH, 1996

A. The Domestic Political Environment and Political Culture

While the international context for the 1997 elections is considerably different from 1992, there have been few changes in the fundamental features of Kenya's domestic political environment and political culture. The overall status Kenya's transition to democracy is more or less unchanged since the 1992 elections, and unchanged since the IFES Assessment of March, 1996. Although the administration of the 1992 elections was competent on election day, and although the Electoral Commission has become increasingly efficient during the course of conducting nearly 30 by-elections since the general election, the domestic political environment has not evolved into a democratic political culture. Stated simply, this environment continues to resemble the proverbial glass of water that is simultaneously "half-empty and half-full."

- The return to multiparty politics in Kenya appears to be firmly established. As preparations begin for the forthcoming elections, all major political factions are planning for a multiparty contest, and all are publicly committed to "pluralism." None of the major political parties or factions of parties were contemplating a boycott of the elections at the time of this assessment, though such action remains an option. At the same time, all representatives of the opposition parties with whom we spoke complained of the absence of a "level playing field," and of periodic harassment by the Government of Kenya. The most frequently voiced complaints were the denial of

permits for public meetings by the Provincial Administration, the cancellation of previously issued permits, and the restriction by the state of the freedom of movement of individual political leaders. It would thus appear that there has been little improvement in the implementation of either the Public Order Act or the Chief's Act since the 1996 IFES assessment. Neither act has been repealed though some aspects of each that pertain to acceptable behavior by representatives of political parties may be revised through pending legislation (See section II.C below).

- The level of political liberalization and amount of "political space" in Kenya in 1997 is significantly greater than in the era prior to the return of multiparty politics. However, whether the level of political liberalization is greater in 1997 than in 1992 or 1996 is difficult to determine:

(1) **POLITICAL VIOLENCE.** The ethnic clashes and human rights violations of the early 1990s more or less ceased by 1995, but reports of police torture, corruption and the decline of discipline within the police regularly appear in the Kenyan press. Police harassment of prominent leaders of the opposition is also on the rise. Paul Muite, the Member of Parliament from Kikuyu constituency and a leader of the yet to be registered Safina party was severely beaten by police in February. Raila Odinga, the leader of the National Development Party of Kenya, was beaten by police in Eldoret on April 12th. A body guard of Kijana Wamalwa, the leader of Ford-Kenya, was shot on April 14th. Mwai Kibaki, the leader of the Democratic Party had his home broken into on April 16th, but no property was disturbed or stolen. A meeting of presidential hopeful Charity Kaluki Ngilu was also broken up the same week. As the elections approach, a pattern of political violence appears to be evolving that while different in forum, resembles the violence that occurred prior to the 1992 elections in that its sole purpose is to intimidate the opposition.

(2) **FREEDOM OF THE PRESS.** The reemergence of a free press continues to be an important feature of Kenyan political life. Open harassment by the government of the press, a constant practice throughout 1992 and 1993 has largely ceased, but more subtle forms of harassment continue (e.g. pressure on those who finance or advertise in publications that are sometimes critical of the government). Moreover, as the elections approach, state harassment of the press may increase. In a speech delivered in early April, the Chief Justice of Kenya, devoted much of his remarks to an attack on the Kenyan press.

(3) **CIVIL SOCIETY.** Civil society is both larger and more robust than in the early 1990s. The NGO Council of Kenya reports a steady rise in the number of its member organizations, including NGOs in the rural areas. The number of NGOs formed for the purpose of advancing Kenya's transition to democracy has also increased, both in

number and in managerial capacity. Civil society is also more focused and articulate on a range of important issues, including constitutional reform, the role of the police and civic education. At the same time, the Government of Kenya remains openly skeptical of the intentions of these groups, particularly those engaged in civic education. In late March, the Office of the President issued an internal circular to members of the Provincial Administration that groups engaged in civic education may be "a threat to the state" and must therefore be closely monitored, and if necessary, their activities curtailed.⁷ Representatives of several organizations who met with the assessment team reported harassment or the fear of harassment by the Provincial Administration when their organizations mounted programs in the rural areas.

(4) FREEDOM OF MOVEMENT AND ASSEMBLY. Unnecessary restrictions of the freedom of movement and right to assembly by political leaders and the representatives of political parties continues, particularly in selected rural areas or "zones" (e.g. the attack on Raila Odinga in Eldoret). These restrictions are a renewal of the type of restrictions that occurred during the run-up to the general elections in 1992 (i.e. in the Rift Valley Province and in Northeastern Province.).

- Notwithstanding the commitment to multiparty elections and significant progress in respect to political liberalization, Kenya's transition to democracy is incomplete and fragile in respect to most internationally accepted attributes of democracy.⁸
- There is a continued stalemate between a government elected by the minority of the electorate and a divided opposition. The government has yet to publicly acknowledge that in an emergent democracy, it must recognize, respect and bargain with an opposition that obtained nearly two-thirds of the vote in the last election. Instead, the government and ruling party, KANU, have systematically sought to undermine the opposition by (a) openly soliciting opposition MPs and local councilors to defect to

⁷ During the nine days the IFES Team was in Kenya (on March 24-25, 1997), a workshop was organized in Loitokitok by one such NGO (the Civic Resource and Information Centre) for the purpose of conducting a program on civic education was halted by the Provincial Administration on the basis of the circular. Though the circular has yet to be published by the Office of the President, its text, as read to those who assembled for the workshop by the Divisional Officer, and as partially transcribed by a diplomatic observer at the workshop, appears in Appendix IV of this report.

⁸ We adhere to the idea that while there are many institutional manifestations of democratic practice and while each country must establish its own appropriate configuration of democratic institutions, there is an irreducible set of conditions found in any established democracy. These are: (1) The election of key officials responsible for the making of public policy. (2) Free and fair elections. (3) Universal suffrage. (4) The right of all adult citizens to run for elective office, though age limits may be higher for holding office than for suffrage. (5) Freedom of expression. (6) The existence of alternative sources of information, particularly sources alternative to the state. (7) Associational autonomy--that citizens have the right to form independent associations including political parties and interest groups (Dahl 1989: 221).

KANU; (b) intimidating and otherwise pressuring prominent supporters of the opposition parties to cease their support; and (c) preventing or limiting any attempts for meaningful dialogue between government and opposition.⁹

- Government leaders continue to blur the distinction between the government and the ruling party KANU. As noted in the 1996 IFES report, KANU officials and candidates make repeated use of state resources for party purposes while opposition leaders are denied access to these resources. No formal rules or codes of conduct or legislation exist that delineate the boundaries between political parties and the state. No informal rules or customs have emerged that specify what is permissible and what is not in this area.
- The opposition has generally failed to communicate to the government and ruling party, and particularly to President Moi, that it recognizes the legitimacy of the government and perhaps more important, that the government and ruling party represent the legitimate interests of significant elements within Kenyan society even though it obtained only one third of the votes in the elections of 1992.
- The opposition continues to be divided amongst itself. Leaders of the three principal opposition parties are seemingly unable to appreciate and accommodate each others' respective interests or regard these interests as legitimate. Each of the three principal opposition parties has split into two or more factions or seen prominent leaders leave to set up their own parties or join others. If anything, the prospects for tolerance, bargaining and compromise among opposition elements is significantly less than it was in 1992.
- As the time approaches for the 1997 elections and candidates and parties begin their campaigns, political violence is likely to increase and may exceed levels attained in 1992. While a return to ethnic clashes is unlikely, violence between supporters of rival candidates in constituencies of closely contested races is a distinct possibility.
- Although the Electoral Commission has improved its administrative capacity since 1992, its commitment to transparent procedures remains limited in the minds of many

⁹ For example, with few exceptions, leaders of the ruling party have refused to participate in any public or private forums to discuss any matter of public policy or issue pertaining to Kenya's transition to democracy with leaders of the opposition parties. A notable exception was a forum on macro-economic policy and governance organized by the World Bank held in Taita Hills in 1995. More often, as occurred while the assessment team was in Kenya, a forum is organized (in this instance, in Limuru on constitutional reform), often with donor support, to which all parties are invited to send representatives. Representatives of the opposition parties attend the meeting, while KANU boycotts the event labeling a forum an instrument of the opposition. This scenario has remained unchanged for nearly four years.

Kenyans, and in comparison to the level of transparency achieved in several other African countries. In contrast to steps taken by electoral commissions in Ghana and Uganda, the Electoral Commission has yet to establish mechanisms (e.g. the Inter-Parties Advisory Council in Ghana, or the Consultative Committee on Presidential Campaigns in Uganda) to increase the transparency of the process of election administration and build confidence of such among the principal political parties.

B. The Electoral Commission

Perception and reality are often interchangeable phenomenon in Kenya when it comes to explaining motives and capabilities of individuals or institutions. In September 1996, the terms of nine members of the Commission expired, including the term of the Chairman, Z.R. Chesoni. The reappointment of Justice Chesoni among others, and the selection of new members from backgrounds essentially similar to those who had served before, did not favorably impress the donors or observers from across the spectrum of Kenyan politics.

The 1996 IFES Report summarizes the contradictory and ambivalent opinions held by most Kenyan observers:

“The Commission by its outward behavior in administering elections, since late 1992, has been able to improve its record and reputation for independence, impartiality and competence, as can be seen in a survey of Kenyan monitor's reports on by-elections. Many Kenyans, however, still point to the Commission as the most important and fundamental flaw in the electoral system.”

The 1997 mission also encountered a strong ambivalence among political leaders, journalists, NGO staff and leadership concerning the independence, objectivity and the impartiality of the Electoral Commission. The opinion that the EC is “the most important and fundamental flaw in the electoral system,” remains firmly embedded. All members of the Commission were appointed by President Moi, and the impression given through this process is that there has been no significant change in the composition of the Commission. Moreover, the Commission does not take a proactive approach of reaching out to political parties or NGOs involved with the electoral process although it does maintain an “open door” to those organizations that wish to discuss matters with Commission members. There is also a grudging acceptance by several parties and NGOs that the quality of the Commission's management of the by-election process has steadily improved.

In recent weeks there has been a new series of contacts between the Commission and important elements in the NGO community in respect to the development and

distribution of civic education materials, procedures for election monitoring, and the respective roles of the Commission and the NGO community in voter education campaigns. The transparency and accountability of electoral processes provided by robust civic institutions appear to have a greater opportunity to positively impact the electoral environment this year than in 1992. As previously noted, these groups are more numerous and better organized than they were five years ago. They are also more experienced.

Perhaps more significant was the improvement in relations between the Electoral Commission and opposition political parties during the recent by-election in the Lang'ata Constituency. Dramatic pre-election confrontations between political protagonists, including some violence, were followed by a number of weapons seizures and arrests of activists in opposition and ruling party camps. The Lang'ata by-election was held and the re-election of Raila Odinga received national attention. Odinga himself took the unprecedented step of posting an advertisement in the national press thanking his opponents for a tough but good campaign, praising his party workers and those of the other parties for their discipline and commitment to the process, praising the police for their conduct, thanking the voters for their diligence, and singling out the Electoral Commission for professionalism and impartiality in "serving Kenyans not individuals" in the administration of elections.

Is the reported progress in impartiality and professionalism on the part of the Electoral Commission sustainable in the coming period? Some opinion leaders feel that it is. Two of the most prominent NGO leaders involved with organizing domestic monitors told the IFES assessment team of their ongoing and effective collaboration with the Commission on the design and production of training materials, and on the accreditation of personnel to participate in civic education training and campaign activities. The leadership of the Institute for Education in Democracy (IED) and the Bureau of Electoral Education Research and Monitoring (BEERAM) both stated independently that their organizations will be accredited to monitor the elections, and that they will meet "about every two weeks with the Commission" to review preparations for monitoring the elections.

By contrast, a number of emergent and less prominent NGOs involved with civic and voter education and the promotion of human rights report their efforts have been frustrated or even blocked by the Provincial Administration and police. The contrast in relations between the Electoral Commission and the NGO community on the one hand, and the Provincial Administration and political parties and the NGO community on the other, is striking. As noted above, the Office of the President issued a circular to the Provincial Administration that empowers district officers to prevent the holding of unauthorized civic education activities.

When questioned about extending the consultative process to political parties, the Commission reassured the IFES team that this was standard practice and indeed had been the practice since the 1992 Elections. Whether or not a consultative process was central to communication between the Commission and political parties in 1992, it has apparently functioned in recent by-elections as evidenced in meetings between the parties, the Commission, relevant security agencies, and NGOs to contain an explosive situation and support the electoral process.

As the campaign unfolds prior to the 1997 elections, consultations between the Commission and political parties should become the central mechanism for addressing outstanding issues that will surely emerge. The Electoral Commission allowed that only three parties participated in such consultations in 1992, but that the principle of consultations with the parties was an "established practice and will continue."

The IFES team also discussed the possibility of establishing a formal consultative mechanism such as the Consultative Committee on Presidential Campaigns in Uganda or the Inter-Parties Advisory Council in Ghana by noting the benefits that accrued from such bodies in these countries. These forums facilitate a dialogue between contesting parties, increase transparency and "demystify" an otherwise opaque administrative process about which there is often much suspicion. They raise the overall legitimacy of the electoral process in the eyes of the principal protagonists, as evidenced by a sharp decline in the number of allegations of election fraud and mismanagement. The IFES team was encouraged by the statement by the Chair of the Electoral Commission and by other commissioners that the Commission would consider the establishment of such a forum.

C. New Legislation

The constitutional framework for the work of the Electoral Commission remains in place as described in the 1996 report. However, there are a series of proposed changes in the electoral laws, which if passed, would consolidate the various statutes into one section of the legal code and integrate the work for the Electoral Commission into a series of subsidiary schedules. This "codification" (actually recodification) of the electoral law could, if enacted as described to the assessment team by the Chairman and Vice-Chairman of the Electoral Commission,¹⁰ would significantly enhance the power of the Commission over the electoral processes. Unfortunately, the draft of this proposed legislation was not available to the assessment team as it had been referred to the Attorney General's

¹⁰ In addition to the three hour meeting with members of the Electoral Commission on March 25th, Rob Henderson discussed the recodification of election laws when he met with the Chairman and Deputy Chairman of the Electoral Commission on February 25th during a previous trip to Kenya.

chambers for presentation to the Cabinet. As draft legislation, this bill is considered a work in progress by the Government of Kenya and is only available from the Attorney General. As noted above, the assessment team was unable to schedule an appointment with Attorney General Wako.

The potential capacity of the Electoral Commission to control the electoral environment will be strengthened if the consolidation and recodification of the present law is approved by the Attorney General, the Cabinet and the Parliament in the form envisioned by the Chairman and the Electoral Commission. This consolidation will place within the same legal instrument all aspects of election administration including:

- expedited grievance procedures during the nomination and campaign periods, and on election day allowing court priorities to be subjected to election related events;
- appeals to courts for judgments by the Electoral Commission on an expedited basis;
- authority over the Provincial Administration and public security officials given to the Electoral Commission and those whom it would designate during electoral events including registration, nomination, election day, etc.;
- authority over scheduling and issuing of permits for campaign rallies and other election related events;
- authority to ensure equal air time and equal access to the broadcast media for campaign related broadcasts;
- a code of conduct for political parties requiring direct oversight and control over party supporters to maintain public order;
- guidelines for NGOs involved in election monitoring and civic education activities;
- elucidation of the authority of the presiding officer and other election officials for maintaining security and order at polling stations and other election related locales;
- a schedule of election offenses and authority including the authority to the Electoral Commission to ban candidates should they or their parties promote violence.

One very important area of election administration excluded from the proposed consolidation of electoral law is the Political Parties Registration Act. The Registrar of Societies will retain control over the registration and legalization of political parties. In meetings with the Electoral Commission, KANU, the opposition parties, NGOs, and

observers of Kenyan political life, the assessment team was told that any change in the current procedure would prove difficult and controversial, and would delay and possibly derail the reform of the electoral laws. Amendment or repeal of the Parties Registration Act has therefore been omitted from the proposed consolidation of law submitted to the Attorney General.

The proposed increase in the Electoral Commission's authority over the campaign, the activities of political parties, and the settling of campaign related disputes, ensures a more central role to the Commission in setting the tone and atmosphere for the campaign. Any variance from equitable management of the electoral processes will be immediately evident in the decisions made. This increase in control over the electoral environment will also ease the task of participants in identifying proper channels for the redress of grievances during the election cycle. The job of monitors and observers will also be made more coherent during the registration, nomination of candidates, campaign period, and on election day.

Most significant, the proposed changes will remove all but one anomaly (i.e. procedures for the registration of political parties) in the administration of Kenyan elections. Under current legislation, the Electoral Commission is responsible for administering elections, but has virtually no power to regulate election campaigns or insure a level playing field for contestants for office as this authority is vested in the Provincial Administration, the head of the Kenya Broadcasting Corporation, and the Registrar of Societies. As a consequence, the Commission has been frequently criticized for doing little to improve the electoral environment even though it has improved its conduct of election administration. At the same time, the Commission has defended its inaction on the grounds that it does not have the authority to act. By proposing to assume the responsibility to regulate the electoral environment, the Commission has recognized that administration of the nuts and bolts of the electoral process, the regulation of election campaigns, and the maintenance of a free electoral environment are inseparable aspects of a single process. Should the proposed consolidation and recodification of electoral laws proceed in the manner described to the assessment team, the potential for a significant improvement in Kenyan electoral practice will be greatly enhanced. Should such a potential be provided by law, the level of public expectations for the Electoral Commission to utilize its new authority in an impartial manner will also rise.

There are questions among knowledgeable observers as to whether the proposed consolidation of authority in the hands of the Electoral Commission will be sustained through the Cabinet and Parliamentary vetting of the draft legislation. There are natural constituencies in the government at the national and provincial level for retention of the status quo. The Parliamentary vetting will also draw into sharp focus the punitive power to be given to the Electoral Commission over sitting and future parliamentarians as they

stand for office. The content and form of the proposed legislation may well evolve considerably prior to passage.¹¹

With these caveats in mind, it is the judgment of the 1997 Team that reform of the law governing Parliamentary and Presidential Elections in terms described by the Chairman will serve to strengthen the Electoral Commission and its capacity to control the electoral environment. While many Kenyan observers are uncomfortable with the increase in power over election processes by the current commission, legislative steps taken to improve the transparency and responsiveness of the Commission are to be applauded. The careful scrutiny of the proposed legislation as it makes its way towards law will require an appreciation of the administrative challenges facing the Commission under the current legal structure, and of the political culture in which the reforms are to take place.

D. Effects of Constituency Boundary Demarcation (Delimitation)

The establishment of appropriate and legitimate constituency boundaries is one of the fundamental responsibilities of election administrators in countries that elect all or part of their legislators from single or multimember districts as distinct from countries that elect legislators from party lists on the basis of proportional representation. The demarcation of constituency boundaries in Kenya is therefore an important consideration for the holding of legitimate and credible elections, yet one that is rarely discussed by Kenya's political leaders or in the Kenyan press.

The principle of one person one vote is an ideal to which democratic polities aspire. The question of whether the vote of an individual in one part of a country is equivalent to the vote of another from a different locale presents a fundamental dilemma for those attempting to balance diverse ethnic and cultural groupings within a broader electoral framework. The principle of political equality balanced by considerations of other factors is established in section 42 (3) of the Constitution of Kenya:

“All constituencies shall contain as nearly equal numbers of inhabitants as appears to the (Electoral) Commission to be reasonably practicable, but the Commission may depart from this principle to the extent that it considers expedient in order to take account of (a) the density of population, and in particular the need to ensure adequate representation of urban and sparsely-populated rural areas; (b) population trends; (c) the means of communication; (d) geographical features; (e) community of interest; and (f) the boundaries of existing administrative areas.”

¹¹As the IFES Team was preparing the final draft of this report, we have been advised that the proposed legislation has been shelved and will not be considered by Parliament.

The Constitution further states that the Commission shall review the number, boundaries and names of constituencies at intervals "of not less than eight and not more than ten years, and whenever directed by Act of Parliament."

The number of parliamentary constituencies was increased from 158 to 188 in 1987 prior to the last elections held under a single-party format in February, 1988, and again in September, 1996 when the number of constituencies was increased from 188 to the maximum permitted by the Constitution, 210. The number and boundaries of the constituencies established prior to the 1988 elections was maintained for the multiparty elections of 1992. This demarcation significantly violated the principle of equal numbers of inhabitants and greatly favored the ruling party, KANU. With an average number of 42,010 registered voters per district nationwide, the actual number of registered voters ranged from a low of 7,908 in Ijara constituency in North Eastern Province to a high of 120,705 in Molo in the Rift Valley Province, a population ratio of the largest to the smallest district of 15.3:1. Put differently, the value of a vote for the residents of Molo was one fifteenth the value for inhabitants of Ijara. In terms of the average number of registered voters per constituency, voters in Ijara received more than five times the value of what they would have received had the demarcation been consistent with the principle of equal population, while the residents of Molo received slightly more than a third of what they would have received had the standard of equal population been rigorously applied. In clear violation of the Constitution, it should also be noted that neither Nairobi nor Mombasa were allocated additional constituencies in 1987 despite the fact that both cities experienced rates of population growth that were considerably above the national average. Most significantly, the average number of voters in constituencies won by KANU was 33,352 while the average number in constituencies won by the opposition was 51,850 (Fox 1997:604). Voter turnout was also consistently less in constituencies won by the ruling party (Fox 1997:599). These findings explain why the ruling party won 53.2 percent of the seats with only 29.7 percent of the parliamentary vote. Indeed, one analyst estimates that had the demarcation adhered to the principle of an equal number of inhabitants per district, the ruling party would have lost its parliamentary majority (Fox 1997:605).

The 1996 demarcation continues to favor regions that supported the ruling party in 1992, though the extent of the disparity in terms of the number of inhabitants or registered voters per district could not be determined with precision by the assessment team. Although the descriptions of all 210 constituencies have been published in the Kenya Gazette (Government of Kenya 1996b), the national map indicating the new constituency boundaries is still being prepared by government cartographers, and the IFES team has had insufficient time to recalculate the number of registered voters in each district based on the 1992 voter rolls. Changes in patterns of residence and voter registration for the

1997 elections may also alter the final number of voters per district.¹²

Notwithstanding these considerations, *if* the geographical patterns of voting behavior established in the elections of 1992 are maintained in 1997,¹³ a preliminary analysis suggests that KANU will capture approximately 12 of the 22 additional seats, while Ford-Asili will gain 5, Ford-Kenya 3, the National Development Party of Kenya 2, and the Democratic Party none. A review of the distribution of the additional 22 seats across Kenya's eight provinces, however, suggests that the projected estimates of which parties will gain the most from the demarcation may be due to gerrymandering alone rather than to the creation of new districts of widely different numbers of inhabitants. One conclusion, however, is clear: while the demarcation of 1996 did not exacerbate the inequalities of constituency size that resulted from the 1987 demarcation, it has done little to ameliorate the disparities established by the previous demarcation. As in 1987, the most under-represented citizens are the residents of Nairobi who were provided with no additional constituencies. A comparison of the distribution of seats for the 1992 and 1997 elections across Kenya's eight provinces is presented in Table 1 together with the percentage of the population for each province and the percentage of parliamentary seats won by KANU in each province in 1992.

Table 1: Effects of the Demarcation of Parliamentary Constituencies for the 1992 and 1997 Parliamentary Elections

Province	1992		1997		1997 estimates	1992
	No. of seats	% seats	No. of seats	% seats	% of Kenya's population	% seats won by KANU
Nairobi	8	4.3	8	3.8	6.9	12.5
Central	25	13.3	29	13.8	13.3	0.0
Coast	20	10.6	21	10.0	8.1	85.0
Eastern	32	17.0	36	17.1	16.8	65.6
Northeastern	10	5.3	11	5.2	2.4	80.0
Nyanza	29	15.4	32	15.2	17.1	24.1
Rift Valley	44	23.4	49	23.3	23.6	81.8
Western	20	10.6	24	11.4	11.7	50.0
Totals	188	100.0	210	100.0	100.0	

¹² Such calculations can readily be accomplished with GIS (Geographic Information System) software by entering the number of registered voters in 1992 for each location or sublocation specified as the constituent units for each constituency. We urge that such a follow-up analysis of the 1996 demarcation be conducted without delay.

¹³ The assumption that geographical voting patterns will remain substantially the same is reasonable given Kenya's electoral history. The same electoral divisions that emerged as far back as the pre-independence elections of 1961 and 1963 were repeated in 1992 (Barkan, 1993).

In environments riven with suspicion and mistrust, an inequality is examined for advantages bestowed on one or another protagonist. For example, the assumption that increases in the number of constituencies in remote areas of the country which supported the ruling party in the 1992 election are based solely on partisan advantage overlooks the serious issues facing the Electoral Commission in attempting to service voters and candidates in rural areas. Lightly populated constituencies can present formidable logistical challenges to candidates because of their vast size. Often candidates have difficulty in establishing contact with the inhabitants of these areas unless smaller constituencies are established with a less than average number of voters. When, however, the voters in urban areas such as Nairobi are systematically under-represented, reasonable doubts arise as to whether the requirements of effective election administration and considerations of candidates movement are the explanation behind the decision to create new seats in the rural areas. The fact that the Electoral Commission alone is responsible for demarcating the new boundaries combined with the virtual absence of any public discussion by the Commission regarding how it carried out its task, has contributed to perceptions that considerations of partisanship may have dominated the process. Transparency in boundary demarcation, as in all other election procedures, remains an essential ingredient for trust in electoral administration.

E. Status of Voter Registration

IDENTITY CARDS AND VOTER REGISTRATION CARDS

Voter registration in Kenya is a process about which there is much confusion in the minds of most Kenyans. According to the Office of the President, the process requires three steps: (1) The acquisition of a new National Identification Card, (2) registering to vote, and (3) obtaining a new Voter Registration Card after one's name has been entered into the register and checked to ensure that a citizen has registered only once. The requirement that citizens possess a national identification card before registering to vote was first implemented prior to the multi-party elections of 1992. The Chairman of the Electoral Commission, however, has stated that citizens in possession of an old national identification card or a voters registration card, will be permitted to register. Both the Office of the President and the Electoral Commission have restated their respective interpretations of the requirements for registration in several occasions with the result that public confusion about the matter has increased.

The Government of Kenya began the process of issuing new National Identification Cards in 1996 to replace cards issued in the 1980s and to provide cards to many citizens for the first time. The process continues, and at some date, the old cards will presumably be invalid. The Government, however, has yet to announce what date it will be, thus further confusing the issue.

According to Kenya's constitution, all citizens over the age 18 are entitled to vote, and thus to register to vote. In the opinion of the IFES team, there is no logical reason, therefore, why any of four documents cannot be used as proof of one's eligibility to register: (1) a birth certificate, passport or other document that indicates one's place and date of birth. (2) a National Identification Card issued before 1996. (3) a new National Identification Card issued in 1996 or 1997. (4) an existing Voter's Registration Card from 1992, or from a by-election held since the last general election.

The confusion about whether citizens must possess a new National Identity Card in order to register has created widespread suspicions that resemble those expressed before the 1992 elections when identity cards were required for voter registration for the first time. Several individuals queried by the IFES assessment team reported delays of up to two weeks and queues of up to four hours in the Nairobi area, and in some rural areas. A typical complaint is that when an individual presents oneself at the appropriate government office to obtain the new identification card, he or she is told to "come back in two weeks," informed that there is a shortage of materials, or given other "run-arounds." A number of opposition leaders stated flatly that the two card system, and especially the requirement for new identification cards is simply a procedural effort to depress the opposition vote in areas where the opposition has many of its supporters. While there is no data presently available to systematically investigate this allegation, there is a widespread belief among opposition supporters that residents in areas favorable to the government experience few (or fewer) problems in securing their identity cards.

As of the beginning of May, the Minister of State in the Office of the President, Jackson Kalweo, announced that 10.4 million people had registered for the new identity cards, and that 9.2 million cards had been processed and dispatched to various stations where they are being picked up by those who had requested the new cards.¹⁴ As of the end of February, the chairman of the Electoral Commission indicated to one member of the IFES team¹⁵ that new identity cards would eventually be given to 11,534,375 people of voting age. As of that time, 9,574,400 had actually been issued, a higher figure than announced by the Minister in May. Thus, there is also confusion as to how many new identity cards have been issued or will be issued.

In 1992, 7,907,100 Kenyans registered to vote while 5,423,800 ultimately voted, a turnout of 68.8 percent. Given the continuing confusion over the requirement for new identity cards, and that the process of voter registration had not yet started before the

¹⁴ As reported in Kenya On-Line News of May 6, 1997 © Features Africa Network/Africa OnLine, Inc.

¹⁵ On February 25th to Rob Henderson.

IFES Team left Kenya, the Team is not in a position to estimate the final number of registered voters, or the likely turnout, at this year's elections. Subsequent to the departure of the IFES Team, the Chairman of the Electoral commission announced on May 7th that voter registration will commence on May 19th and continue through June 22nd. This period of 33 days will be followed by another month during which time the Electoral Commission will prepare and verify the national register of voters.

COMPUTERIZATION OF THE VOTER REGISTER

The issuance of the Voter's Registration Card will also apparently be the occasion for the computerization of the national register of voters. A number of questions arise from this ambitious approach to elections management. While the computerization of the voters register, an administrative tool of great value for the Commission in the organization of its work, is an end in itself, there is genuine concern among those who follow the work of the Commission as to whether this exercise can be completed in time and with the accuracy required. Several members of the Commission expressed similar concerns during the meeting with the IFES Team.

Computerization is a new technology for most members, and there seemed to be little appreciation for the quality control requirements for automated systems in the entry of data on a national scale. In addition, the requirements for the repeated checking of lists of registered voters against the population was also something of a surprise. The IFES Team was asked to comment on complications that could be anticipated, and the amount of time it would take to complete the registration exercise. We responded that without meeting key personnel and a more complete understanding of the technical specifications to be used for the computerization effort, it would be difficult to provide accurate estimates, but that some general guidelines based on the computerization of the registers in Uganda and Ghana were available.

Our discussion with the Commission about voter registration was limited in the amount of technical detail available. However, the requirements for the enumeration of voters, the production and issuance of the registration cards, entering the data into appropriate machines, the simple printing of the registers for checking against the population for errors, and the re-entry of the corrections, re-printing of the lists and then corrections and other cross checks, would easily take six months if not more. The IFES team assured the Commission that the setting up of the automated system was just the beginning, and to stabilize a nationally automated voter's registration system to a high degree of reliability generally takes two to three years.

The Chairman of the Electoral Commission stated his intention to move ahead with the computerization with or without technical assistance from the donor community. As noted above, the Commission initially entered into an agreement with the UNDP for assistance to support the computerization of voter registration, but then decided to embark on the exercise on

its own after a feasibility study was completed by a local firm that recommended the configuration of a system to accomplish the task.¹⁶ The IFES Team learned in subsequent meetings that the Electoral Commission had issued a public tender (EC, 1997) which duplicated and/or made redundant the plans laid out in the project document between the UNDP and the Government of Kenya for the provision of a computerized voters register.

The tendering for bids on March 25th and 26th in *The Standard* and *The Nation* for the management of the Voters' Registration Computerization stunned the UNDP program officers in charge of the technical and financial assistance for the project. A letter of clarification was then sent by the UNDP Resident Representative seeking information on the status of the project from the chairman of the Electoral Commission. As of this writing, no clarification has been provided and the status of the technical assistance effort by UNDP is still in question. The significance of this experience will not be lost on other donors considering support to the Commission.

Serious complications in the administration of the elections will occur should delays created by the computerization of the voter register arise. The initial deadline for the submission of bids in response to the tender was April 10th, an unrealistically early date for firms other than the firm which prepared the feasibility study. Although the deadline was later moved back to April 21st, the prospects of attracting an organization experienced in this type of work is limited. In the meantime, President Moi announced that registration would begin in April, and the Chairman of the Electoral Commission subsequently announced that registration will begin on May 19th. If the latest announcement remains valid, it will be extraordinarily difficult, if not impossible, for the registration process to proceed on a computerized basis for the simple reason that no time has been allowed to put the system in place. Unless the Commission, or its consultants, have already implemented such a system, the Commission would be advised to conduct registration on a non-computerized basis as for previous elections. If, on the other hand, registration is delayed until July or later, it may still be possible to proceed with registration on a computerized basis, but the risk of failure will remain high.¹⁷

Because of the high risks associated with the computerization of the national register, as well as the high level of suspicion that already surrounds the registration process, the Commission should make every effort to maintain as transparent an operation as possible if it proceeds with implementing this approach. As problems arise, as they surely will with the adoption of any new procedure and technology, the credibility of the Commission will be

¹⁶ The firm which prepared the feasibility study is the Independent Service Academy (ISA, 1996). The IFES Team was unable to locate this firm or ascertain any information about its capacity to implement the system it recommended. No address or contact phone numbers appear on the cover of the study. No Nairobi based consultants with whom we talked had heard of the Academy.

¹⁷ Even if computerization of the register of voters is not feasible prior to the upcoming election, the Electoral Commission can revert to the use of a conventional written register by simply compiling the information from the forms Kenyans fill out when registering to vote.

questioned unless it takes time to explain to the leaders of all parties, to NGOs monitoring the election, and to the Kenyan public what computerization of the register entails.

F. Other Issues of Election Administration

NUMBER OF REGISTRATION STATIONS AND POLLING STATIONS

To facilitate the registration of voters and relieve congestion at polling stations on election day, the Electoral Commission intends to substantially increase the number of registration and polling stations compared to 1992. For the 1992 elections, there were roughly 6,000 locations at which Kenyans could register to vote, including some mobile stations. These locations were expanded somewhat for the actual elections to just under 8,000. About 1,000 polling stations had multiple "streams," in effect 2-3 polling stations at one location. The total number of streams was over 9,000, and averaged roughly 900 registered voters per stream.

Although the administration of the 1992 elections proceeded smoothly on election day, some polling stations opened one to two hours late, and many did not close until after dark. Voters were required to cast three separate ballots which were deposited in three separate ballot boxes; one for president, one for the parliamentary election, and one for the local council. While the procedure was easily understood, the maximum "through-put" for each stream was well under 100 voters per hour.

The IFES Team was informed by the Electoral Commission that it plans to substantially increase the number of registration stations and polling stations for this year's elections to approximately 12,500. As in 1992, most (though not necessarily all) locations that serve as registration stations will subsequently serve as polling stations. The Chairman explained the increase in the number of stations as a move to make both registration and voting more accessible to the public. Most Kenyans will travel shorter distances to register and to vote in 1997 (a maximum of 2 to 3 kilometers) than they did in 1992. Because the number of voters per polling station will also be reduced, there will be shorter queues, less waiting, and all polling places are likely to close on time. This will, in turn, expedite the counting of the vote. Other things being equal, the Commission's decision to increase the number of registration and polling stations may also increase voter turnout at the election.

RECRUITMENT AND TRAINING OF REGISTRATION OFFICERS AND PRESIDING OFFICERS

As in 1992, the Electoral Commission will rely heavily (though not exclusively) on teachers from Kenya's secondary schools to serve as registration officers and as presiding officers and assisting presiding officers on election day. Such individuals served well in 1992 and can be expected to do the same for this year's elections. The number of individuals who will need to be recruited for these tasks, however, will be substantially higher owing to the projected increase in the number of registration stations and polling stations. The IFES Team asked the Chairman of the Electoral Commission how many officers would be holdovers from 1992, and what provisions were being made to train these individuals. As the process of recruiting officers has begun only recently, the Chairman was not in a position to provide specific numbers. However, he did note that as in 1992, training would be a major challenge for the Commission.

COUNTING OF VOTES

One of the more controversial decisions made by the Commission in 1992 was the decision that ballots would be counted at a single counting station in each constituency rather than tallying the vote separately at each polling station. The same procedure will be followed in 1997. The procedure is controversial, because it gives rise to the suspicion that ballot boxes can be tampered with, switched or lost en route from polling station to counting station. Kenya is also unique in the region in following this procedure.

The Electoral Commission justifies its procedure on two grounds: First, that neither the public nor candidates for office should be skeptical about the procedure because several controls guarantee that all ballot boxes are delivered to the counting station: (1) All boxes are numbered, and there is an official record kept of all boxes to be sent to the counting station from each polling station that is witnessed by all candidates' agents. Agents at each polling station are therefore in a position to check that all boxes are delivered to the counting station. (2) All ballot boxes are sealed with uniquely numbered seals which may not be broken until the counting process begins. It is therefore impossible to tamper with the contents of the boxes. (3) Candidates' agents may accompany the ballot boxes to the counting station in vehicles provided by the Commission. Second, the Commission contends that counting at the polling station will give rise to election violence, and that such violence can only be eliminated or controlled if the ballots are counted at a central place where adequate security can be provided. When the IFES Team noted that Kenya is the only country in the region where ballots are not counted at the polling station,¹⁸ and that other countries have no difficulties with this procedure, the Chairman stated that there were cultural differences that required Kenya to adopt a different procedure.

Here again, the issue is one of perception and whether or not the adopted procedure is as transparent as alternatives. The Commission has established controls to guarantee that all valid

¹⁸ Ethiopia, Tanzania and Uganda all follow the standard procedure of counting ballots at the polling station.

ballots will be counted and that no invalid ballots will be included in the count, but the perception lingers that something irregular may still occur.

G. Non-Governmental Organizations

As discussed above (II.A and II.B), the NGO presence in Kenya is growing despite continued skepticism by the Government of Kenya as to the intentions of these organizations. In marked contrast to 1992, the issue of whether organizations formed for the purpose of monitoring the election will be accredited by the Commission is not in doubt. Indeed, one positive development is that the Commission has chosen to cultivate dialogue with the two largest organizations that monitored the 1992 elections, the IED (Institute for Education in Democracy, the successor to the National Election Monitoring Unit), and BEERAM (Bureau for Election Education and Monitoring). Both of these organizations have been engaged in civic education, and intend to mount programs in voter education prior to the election in addition to training and posting monitors at most polling stations. The leaders of both organizations are well-known to the Commission and meet periodically with the Chairman of the Commission. These two organizations, together with others, are in the process of forming a committee, tentatively known as "Election Watch" to coordinate their activities and determine a division of labor satisfactory to all. IED has also offered to collaborate directly with the Commission in the development and implementation of voter education programs, but so far the offer has not been taken up. When asked about the possibility of such collaboration, the Chairman told the IFES Team that NGOs should confine themselves to matters of civic education while the Commission would assume primary responsibility for voter education.

Although the relationship between the Commission and selected NGOs is much warmer than in 1992, the relationship between the NGO community and the Provincial Administration is not. As previously noted, several groups have had their activities curtailed, and the recent circular by the Office of the President to field officers of the Provincial Administration suggests that severe limits are likely to be placed on NGOs engaging in civic education and voter education as the elections approach. The March circular issued by the Office of the President is a troubling development that undermines the evolution of democratic practice in Kenya.

NGOs monitoring the elections will also be faced with a greater logistical challenge in 1997 than they were in 1992 as a result of the intention by the Electoral Commission to significantly increase the number of registration and polling stations. Just as the Commission will need to recruit and train more personnel to staff these stations, so too will the organizations intending to monitor the elections. The placement of monitors at all polling stations may not be feasible. Should this be the situation, monitoring organizations need to develop methodologies for ensuring that monitors are placed at a representative sample (preferably a random sample) of stations.

H. Political Parties

Political parties in Kenya are severely wanting in respect to the requisite skills and organizational capacity to make them viable political organizations. Indeed, apart from KANU, no Kenyan political party appears capable of regularly performing the tasks and functions which parties normally perform in a democratic political system; namely (1) the recruitment of political leaders and effective actions to secure their election to public office, and (2) the articulation and implementation of a program of public policy. Political parties in Kenya suffer from two additional weaknesses noted in section I: all, including KANU, have fragmented, and their leaders have little tolerance for the leaders of other parties or of the factions within their own party. The result is an unending contest between a collection of personal political followings each of which is largely based on the mobilization of separate geographic and ethnic supporters.

Given the fact that Kenya is an agrarian society in which ethnicity has long played a role in the formation of political organizations, it is unlikely that the structure of Kenya's party system will change in the foreseeable future; certainly not before the elections of 1997. Parties will continue to be organized along geographic and ethnic lines. Much, however, can be done to overcome the basic weaknesses of these organizations.

With the exception of KANU, Kenya's parties suffer from four basic weaknesses: (1) They have a low level of managerial capacity to maintain an appropriate secretariat and to direct the activities of branch organizations in the field. (2) They have a low level of financial management to raise adequate revenue for party activities, to allocate revenue in an efficient manner, and to account for expenditures. (3) They repeatedly fail to articulate a program of public policy or a vision of Kenya's future. (4) Perhaps most serious, they have little analytical capacity for devising effective campaign strategies to elect their candidates to office other than to play on the ethnic and geographic identities of their core supporters. As a result, they are usually unable to develop support beyond their ethnic base.

The leaders of Kenya's opposition parties have rarely taken appropriate steps to overcome these weaknesses. One way to start would be through the establishment of a series of training programs that would address each of the four basic weaknesses. Such programs could, though not necessarily must, be mounted with technical assistance from those experienced in the development of party organizations in other countries. Such training could also be organized on a non-partisan basis, but given the current political environment it is probably more realistic for each party to mount its own training program though each might draw on a common pool of technical advisors for this exercise.

Given the political environment, it would also be highly desirable for party leaders at all levels to be exposed to programs on both conflict resolution and non-violent social change to engender the political process with a measure of political tolerance now missing and to limit the

rise in violence that has been evident over the last two months. The alternative to engaging in this manner, is to surrender the strategy of the opposition to the para-military tactics of Raila Odinga: arm your people, create a confrontation, and then hope the police behave responsibly and arrest all carrying arms. The success of nonviolent social change in the face of governments unwilling to simply massacre the opposition has been proven in numerous countries around the world.

I. Constitutional Reform

Leaders of the opposition parties and human rights groups have been calling for the revision of Kenya's constitution for more than three years, and have sought the holding of a constitutional conference to be attended by the leaders of all parties to negotiate a new constitutional arrangement for Kenya. Their basic objectives are four: (1) To reduce the concentration of executive power in the Office of the President, perhaps by transforming Kenya's presidential system of government to a parliamentary system headed by a prime minister accountable to the National Assembly; (2) to devolve a measure of decision-making authority to government at the local level; (3) to rewrite the provisions for electing the members of the National Assembly to guarantee equal representation, either by requiring that all electoral districts have a similar number of inhabitants and/or by electing some or all members of the legislature on the basis of proportional representation; and (4) to strengthen constitutional guarantees for basic political rights including freedom of speech, movement and assembly.

Although President Moi temporarily acknowledged the need for constitutional reform at the end of 1994, the President and other leaders of the ruling party have consistently refused to discuss the matter ever since, stating only that the time for such reform will be after, and not before the 1997 elections. The explanation for the division between the Government and the opposition over this issue is clear: The President and the ruling party benefit from the current constitution, while the opposition parties do not. Of particular significance in this respect is the provision in the constitution, enacted just prior to the elections of 1992 that to be elected president, a candidate must not only obtain a plurality or majority of the total vote, but must also obtain at least 25 percent of the vote in five of Kenya's eight provinces.¹⁹ President Moi was the only presidential candidate who met this test, and thereby avoided a runoff against Kenneth Matiba who came in second in the popular vote.

While the likelihood of constitutional reform before the elections is low, the issue may not be closed. Ironically, it is the fragmentation of the opposition parties that has opened the

¹⁹ The provision was enacted by the members of the outgoing National Assembly prior to the dissolution of parliament for the elections, and thus enacted by KANU which could amend the constitution as it wished since it was the only party with parliamentary representation at the time.

door to a possible inter-party discussion of the issue. Because the opposition has splintered, its leaders have begun to realize that their only prospect for blocking the reelection of the President is to challenge him through a series of strong regional candidates, none of whom can win the election but who together can prevent the President from obtaining the minimum 25 percent in five provinces. Indeed, some knowledgeable observers of Kenyan politics suggest that depending on the number of presidential candidates with a strong regional base, the president may himself may only pass the 25 percent test in three or four provinces.²⁰ Should this occur, the President would be forced into a runoff election against a single challenger, a contest that would probably be much closer than against a splintered opposition.

The President and his advisors may have reached the same conclusion. On April 8th, a close associate of the President (i.e. Mark Too) was quoted in the press as suggesting that the constitution should be amended to lower the minimum threshold from 25 to 10 percent to avoid a runoff election.²¹ Such an amendment, however, would require the concurrence by at least a portion of the opposition in the National Assembly since KANU does not presently hold a two-thirds majority in the legislature to amend the constitution on its own. Some opposition members might be persuaded to support such an amendment. Most will demand a full-scale review of the entire constitution before agreeing to any change that will only benefit the incumbent. In the opinion of the IFES Team, a change in the election provision alone would further undermine the credibility of the electoral process. It might also lead to an opposition boycott of the elections whereas such is unlikely under the present rules.

J. The Donor Community: Priorities and Assistance for the Electoral Process

As in 1992, the democracy minded donors are likely to play a role in supporting the forthcoming elections. The donors have already come together to create a consultative forum, the Donors Development Democracy and Governance Group (DDDG) to coordinate their positions on the elections. Donor activity will take four forms: (1) the provision of technical and material assistance to the Electoral Commission; (2) the provision of technical and material assistance to selected Kenyan NGOs, especially those engaged in civic and voter education and those with the capacity to monitor the elections; (3) support for selected groups of international observers of the elections from the donors' home countries; (4) the mounting of a coordinated and sustained effort by resident diplomatic personnel to systematically follow the election process, from the present through the counting of the vote.

Of these four forms of donor activity, the most prominent are likely to be the second and the fourth. For reasons already discussed (see sections I and II.D), donor assistance to the

²⁰ Coast, Northeast, and the Rift Valley. The key swing provinces in which President Moi received more than 25 percent in 1992 but may not do so this year are Eastern and Western.

²¹ "Mark Too Wants Poll Rule Amended," *Daily Nation*, April 8, 1997.

Electoral Commission is likely to be much less than in 1992. Put simply, the Commission does not intend to seek assistance if it has conditions attached to it that the Commission is not prepared to accept. Conversely, the donors are bound to follow their own rules for providing such assistance. Apart from assistance to implement computerized registration, the need for assistance in 1997 is also less. For example, the United Kingdom provided the Electoral Commission with 30,000 ballot boxes prior to the last general elections. The boxes, which are of sturdy design, should have a life of several elections, and need not be provided again for this election. The increase in the number of polling stations, however, will necessitate the procurement of additional boxes. Approximately 10,500 extra boxes will be required if the Commission follows through on its intention to increase the number of polling stations from 9,000 to 12,500. The Commission already possesses approximately 3,000 of the additional boxes required, but must obtain between 7,500 and 8,000 more.²²

Donors are also less enthusiastic about underwriting the costs of large delegations of international observers who spend only a short time in the country immediately prior to and during the elections. The need for international observers is also less when an effective program of domestic monitoring is in place. Moreover, Kenyans themselves are the best judges of their own elections, a position shared by both the Government of Kenya and the members of the Kenyan organizations committed to monitoring the elections. Kenyan monitors are more familiar with the electoral process in their country than international observers. Local monitors will also be posted to most, if not all polling stations, where they can remain throughout election day. So long as Kenyan organizations are free to observe the elections, and will be accredited by the Electoral Commission to perform this task, the need for international observers will be less than in 1992. On the other hand, the presence of international observers is often critical to insuring that domestic observers are allowed to carry out their work, because international observers are in a position to publicize any restrictions of such efforts. A modest contingent of international observers is therefore likely, but the numbers will be much less than in 1992.

Virtually all donor countries that participate in the DDDG are intending to assist civil society organizations in the belief that these organizations have played, and continue to play, a very significant role in Kenya's transition to democracy. For this reason, the members of the DDDG group are increasingly concerned about the pressure being mounted by the Government of Kenya on organizations engaged in civic education and voter education, and are likely to

²² This estimate is based on the assumption that the Commission will again require each voter to cast three separate ballots into each of three separate ballot boxes. Approximately 27,000 boxes were used in 1992 leaving an excess of 3,000 that were not used. Approximately 37,500 will be required this year. The need for additional boxes could be eliminated if voters were required to mark their choices for president, parliament and the local council on one ballot, or by depositing all three ballots in a single box (the procedure followed in Tanzania in October, 1995 where voters cast ballots for president and parliament). Such a change in procedure, however, is sure to raise questions about the location and use of several thousand unused boxes.

express this concern both formally and publicly to the GOK.

The donor community is also increasingly concerned by the rising level of political violence. On April 16th, fourteen countries issued a public statement deploring recent violence against the opposition and restrictions on political meetings and meetings for civic education stating that "freedom of speech and assembly are fundamental to democracy. . . We urge the Government of Kenya to allow political leaders, candidates, and all citizens, freedom of speech and assembly which are essential to free and fair elections."²³

In light of the current political climate in Kenya even though the general elections are still several months away, the members of the DDDG are coordinating their efforts to follow and understand the electoral process in a systematic manner. They realize, as do most Kenyans, that the electoral process has already begun, that there are many stages to the process, and that what transpires on election day is not the entire story; indeed it is only a small part. They are therefore less inclined to rely on short-term international observers than they were in 1992, and more inclined to rely on themselves. Several will devote significant resources to this effort. Some already have.

III. CONCLUSIONS AND RECOMMENDATIONS

A conclusion in the 1996 IFES assessment was that the Government of Kenya bears primary responsibility for the establishment of an environment that would result in credible and legitimate elections whenever they would be held. Although political parties, NGOs, the press and members of the Kenyan public will all make a significant input into the process, it is the Government and the Electoral Commission that are the primary actors that will determine whether or not there is a "level playing field" for the elections and whether the candidates and supporters of all parties will accept the results--the fundamental test of any election.

The 1997 IFES Team reaches the same conclusion as that of a year ago, and evaluates the prospects for credible and legitimate elections accordingly. By this standard, the Electoral Commission should be commended for the steps it has taken to revise and consolidate existing legislation providing for the administration of elections. The Electoral Commission should also be commended for its performance in the administration of recent by-elections, and for its on-going dialogue with organizations conducting various forms of civic education and intending to

²³ The statement was submitted by the embassies of Austria, Denmark, Belgium, Finland, Germany, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom and the United States. In response, Kenya's Minister of Foreign Affairs, Kalonzo Musyoka, stated on April 18th that foreign envoys should not meddle in Kenya's internal affairs.

monitor this year's elections. Indeed, the opportunity for a genuine and productive partnership between the Commission and these organizations exists for the first time, an opportunity that should not be lost. The Commission's intention to increase the number of registration stations and polling stations will make the electoral process more accessible to many voters. The willingness on the part of the Chairman of the Commission to consider the establishment of an interparties consultative forum to increase the level of transparency in respect to the administration of the elections, is also acknowledged.

At the same time, the Commission's handling of its effort to date to establish a computerized system of voter registration is fraught with many problems that carry a high risk of failure. Even if such a system is established, it is unlikely that the Commission will have proceeded in a sufficiently transparent manner to reduce the high level of suspicion already present in the minds of many Kenyans regarding the registration process. The IFES Team also regards the decision to continue the procedure of counting ballots at a single location as one that is unlikely to build greater public confidence in the process.

Of greatest concern for the 1997 IFES Team, as it is for the democracy minded donors, is the continued posture on the part of the Government of Kenya to harass opposition leaders, and to restrict civil society from exercising its basic rights. Intimidation by officers of the Provincial Administration and the police, apparently, in some instances, at the behest or concurrence of the Office of the President, does not lay the foundation for either legitimate elections, or for advancing Kenya's transition to democracy. As discussed in this report, Kenya's transition to democracy appears to be stalled. While a substantial amount of good will and tolerance on the part of *all* actors, including the opposition, will be required to advance the process of democratisation in Kenya, it is particularly important that the Government of Kenya be more forthcoming as the elections approach.

Berlew, Chris	Second Secretary, U.S. Embassy
Braakhuis, Norbert	Counselor, Royal Netherlands Embassy
Bushnell, Prudence	United States Ambassador to Kenya
Chakava, Henry	Director, East African Educational Publishers Ltd.
Chesoni, Z.R.	Chairman, Electoral Commission of Kenya
Court, David	Representative, Rockefeller Foundation
Geist, Judith K.	Periodic consultant on elections, USAID Mission to Kenya
Githu, Grace	Director, Institute for Education and Development
Gitau, Nancy	Democracy and Governance Officer, USAID Mission to Kenya
Foster, Timberlake	Deputy Chief of Mission, U.S. Embassy
Haddow, Paul	Deputy Head of Mission, Canadian High Commission
Healy, Sally	First Secretary (Political), British High Commission
Huskey, James	Second Secretary, U.S. Embassy
Jaffer, Murtaza	Outgoing Chief Executive Officer, The National Council of NGOs
Jones, George	Director, USAID Mission to Kenya
Kabando wa Kabando	Kenya Human Rights Commission and SAFINA activist
Kariuki, G.G.	Nominated Member of Parliament (KANU)
Kiai, Maina	Director, Kenya Human Rights Commission
Kibwana, Kivutha	Professor, Faculty of Law, University of Nairobi and Chairperson, Centre for Law and Research International (CLARION)
Kivuitu, Samuel	Deputy Chairman, Electoral Commission of Kenya
Linec, Susan	Chief of East Africa Bureau, Associated Press
Mallalieu, Mark	First Secretary (development), British High Commission and Kenya Programme Manager, ODA
Migot-Adholla, S.E.	Rural Sociologist, The World Bank, Washington, D.C.
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Munuve, John	Chief Executive Officer, The National Council of NGOs
Muigai, Githu	Attorney, Law Society of Kenya
Mutiso, Cyrus	Multicon Consultants, Nairobi
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Shikuku, Martin	Member of Parliament (FORD-Asili)
Sperling, David	Professor, Department of History, University of Nairobi
Throup, David	Analyst, British Foreign Office, London
Vandenbroucke, Lucien	Political Counselor, U.S. Embassy
von Brandon, Dearth	Representative, Friedreich Nemine Foundation
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West, Tina	Regional Democracy and Governance Advisor, USAID/REDSO

APPENDIX II. ACRONYMS OF ORGANIZATIONS

BEERAM	Bureau of Electoral Education Research and Monitoring
CG	Consultative Group (a.k.a. "the Paris Club")
CRIC	Civic Resource and Information Centre
FIDA	International Federation of Woman Attorneys
FORD-Asili	Forum for the Restoration of Democracy--Asili
FORD-Kenya	Forum for the Restoration of Democracy--Kenya
GOK	Government of Kenya
IED	Institute for Education in Development
IPAR	Institute for Policy Analysis and Research
ISA	Independent Systems Academy, Ltd.
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
KHRC	Kenya Human Rights Commission
NCNGO	National Council of NGOs
NGO	Non-Governmental Organizations
NCPC	National Convention Planning Committee
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USG	United States Government

APPENDIX III. LIST OF RELEVANT DOCUMENTS

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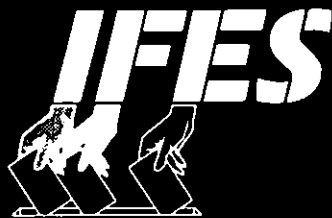
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Appendix IV: Transcript of Circular from Office of the President

The following is a verbatim transcript by the Dutch Embassy of a circular read to the organizers of a civic education forum scheduled at Loitokitok by the Divisional Officer (DO) on March 22, 1997 and attributed by the DO to the Office of the President. Although the DO read the circular to those assembled, he refused to make a copy of the document available to the organizers of the forum.

“It has come to the attention of the Government that of late several NGOs have been involved in civic education with political motivation. Some of these activities may even have undermined the security of the state, and must be curtailed. It is therefore mandatory that all NGOs must apply for licenses to conduct such seminars. Their activities must be closely monitored.”

After reading the circular, the DO explained that any application for a license would be referred to the head of security for the district, the DC, who would make the decision. The process would take approximately two weeks.



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