

**REPORT TO THE  
FELLOWSHIP OF CHRISTIAN COUNCILS OF  
CHURCHES IN THE GREAT LAKES AND THE  
HORN of AFRICA  
(FECCLAHA)  
ON THE OBSERVATION  
of the  
04<sup>th</sup> MARCH, 2013  
PRESIDENTIAL, LEGISLATIVE and COUNTY  
ELECTIONS**

**By**

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## Introduction

Since the 1990s Kenya has seen a number of multiparty elections. With the exception of the 2002 General Elections all of them were perceived as not having met international standards for democratic elections.

The 2007 General Elections were the worst. The then President Mwai Kibaki who probably lost the presidential elections to Raila Odinga was nevertheless declared the winner by the Electoral Commission of Kenya (ECK). He was rapidly sworn in at the State House. The then Chair of the ECK claimed that he did not know who won the presidential race. After doctored results were announced, ethnic clashes among Kikuyu/Kalinjin and Luo started. More than 1,200 people lost their lives and more than 600,000 were internally displaced. Such a widespread outbreak of violence was unexpected and the security institutions were not ready for it. Peace was eventually restored when both sides agreed to a power sharing arrangement. Raila Odinga was appointed Prime Minister (a position which had to be created for him) and his party was co-opted into the Cabinet which was consequently blown up.

Elections in Kenya have always been conducted along ethnic lines. Individual candidates and their ethnic background are important for most of the voters – especially in rural areas – instead of party manifestos or ideologies.

As a consequence of the serious violence in the 2007 elections the state institutions were restructured. A new constitution was adopted by the voters in 2010. The newly formed Independent Electoral and Boundaries Commission (IEBC) which succeeded the infamous ECK started its work in 2011. A number of new institutions were created by the 2010 Constitution: the senate, 47 county assemblies and the office of governor in every county. The aim was to limit the powers of the office of the president.

The presidential election was highly contested and its outcome unpredictable because the incumbent president Mwai Kibaki was constitutionally barred from seeking another term. Just like in 2007 the fight for power was split along two ethnic camps. Uhuru Kenyatta and his running mate William Ruto (Kikuyu resp. Kalinjin) formed the Jubilee Alliance while Raila Odinga and his running mate Kalonzo Musyoka (Luo resp. Kamba) headed the CORD Alliance.

There was widespread fear for political violence and a lot of activities of the civil society, including our partners, Fellowship of Christian Councils and Churches in the Great Lakes and Horn of Africa (FECCLAHA) and the National Council of Churches in Kenya (NCCCK), focussed on calls for peace. While the election campaign was generally peaceful, widespread violence was expected for the time during and after announcements of the results. There was a substantial amount of tension in the country.

Kenya is regarded as a strategically and politically important partner in the fight against terrorism and piracy. A peaceful election and political stability has significance for the whole troubled region in the Horn of Africa.

### **The Brot für die Welt/Evangelischer Entwicklungsdienst observer mission**

It needs to be mentioned that the mission was shorter than usual because of some logistical challenges caused by the late approval of funds. The Team Leader arrived only on 23<sup>rd</sup> February 2013. He was able to conduct meetings with a number of stakeholders and attended important briefings with the partners and the IEBC. However, due to time constraints, it was not possible to observe the campaign activities adequately.

The Team comprised of Heiko Meinhardt (Team Leader), election expert, who has observed more than 25 elections since 1993, Birgit Heinloth, an experienced election observer who served in Sierra Leone and Liberia. Niko Wald, a senior media expert at the Public Relations Department of Brot für die Welt in Berlin coordinated the media work of the team, conducted interviews, took photographs and published news and features on different media outlets including the website of Brot für die Welt.

### **Timeframe and electoral system**

The 2013 elections were the sixth elections after the introduction of a multiparty system of government in the early 1990s. Most of these elections (except the 2002 election) are regarded as flawed and not truly credible.

As a consequence from the violence which occurred after the rigged 2007 General Elections a new constitution was adapted in a national referendum in 2010. The aim was to dilute the powers of the state president by establishing new political institutions below the national level.

The 2013 General Elections were six-fold: The State President (including the Deputy President, running on the same ticket), 47 senators, 291 members of the National Assembly, 47 governors and 47 county assemblies had to be elected. In addition woman representatives for the county assemblies were elected in order to increase the number of women in the assemblies.

Out of the targeted 18 million eligible voters, 14,337,399 registered. For the first time a biometric voter identification system was put in place. Voters were supposed to be easily identified by their finger prints. A Biometric Verification Device (BVD) was available in most of the about 33,400 polling stations. This system has made double or multiple registrations (a serious problem in previous elections) almost impossible.

There were eight presidential candidates, including one woman and eight running mates (among them one woman). In all 244 candidates contested the 47 Senatorial seats, while 237 candidates run for the 47 positions of governor.

290 Parliamentarians in single member constituencies were contested by 2,098 candidates. Compared to the 2007 election there were 80 additional constituencies created in the 2010 Constitution to balance the population growth. 9,887 candidates participated in the County Ward Representatives election (1450 seats) and 303 female candidates run on the special ballot for Women County Representatives.

While all the other positions are elected by simple majority, a presidential candidate needs an absolute majority of 50 percent plus one vote to succeed.

The certified results of the General Elections of 4<sup>th</sup> March were announced on 9<sup>th</sup> March – within the legal requirement of seven days.

The candidate of the Jubilee Alliance, Uhuru Kenyatta, obtained 50.03 % of the valid vote cast and therefore the absolute majority of the valid votes. As stipulated by the Constitution a successful presidential candidate also needs to score a minimum of 25 % of the valid vote cast in 24 of the 47 counties. After having met these requirements he was declared the winner of the presidential election. His major contender Raila Odinga of the Coalition for Reforms and Democracy (CORD) scored 43.2 %. The other contenders remained insignificant: Musalira Mudavadi got 3.9 %, Peter Kenneth scored 0.6 %, Mohamed Dida and Martha Karua 0.4 % each, James Kiyapi received 0.3% and Paul Muite got 0.1 %. The turnout was very impressive: 12,338,667 voters participated in the polls which is equivalent to 86.3 %. This is the highest in the history of Kenya ever (2007: 70.0 %). The number of rejected (invalid) votes was only 0.9 %.

In the Parliamentary Elections no Party Alliance managed to win an absolute majority of the 290 electable seats. The Jubilee Alliance got 137, the CORD Alliance scored 115, while 38 seats were won by smaller parties and alliances. A similar situation occurred in the Senate: 21 of the 47 elective seats were won by the Jubilee Alliance, 20 by CORD while six went to smaller parties.

### **Role of FECCLAHA**

FECCLAHA is the umbrella organisation of Councils of Churches in nine East African countries, namely Kenya, Burundi, DR Congo, Eritrea, Ethiopia, Rwanda, Sudan, Tanzania and Uganda. FECCLAHA worked closely with the National Council of Churches in Kenya (NCCCK) which fielded a good number of the 6,000 domestic observers under the umbrella of the civil society based Election Observation Group (ELOG). In addition FECCLAHA organised an Ecumenical Election Observation Mission of 14 international observers from Burundi, Rwanda, Uganda, South Sudan, Tanzania, Ethiopia and three International Election Observers of Brot für die Welt-EED.

FECCLAHA demonstrated its relevance and importance as a regional body. The participation of high ranking representatives from six member countries was a great sign of regional solidarity and effective cooperation.

### **International Observation Missions**

The Elections attracted widespread international attention. International Election Observers were sent by various organisations including the European Union (EU), African Union (AU), the Commonwealth, the Carter Centre and a number of Embassies based in Nairobi. There were only very few civil society based or faith based international observer groups. The FECCLAHA mission was the biggest among those groups.

### **Independent Electoral and Boundaries Commission (IEBC)**

The IEBC was chaired by Isaac Hassan who was recruited when the commission was established in 2011. He has not been perceived as a political appointee and most of the political stakeholders seemed to have some trust in the IEBC. Its conduct was much better than that of the ECK in the 2007 elections.

There were, however, some shortcomings observed. The biometric voter registration devices were of poor quality and broke down in most of the polling stations. Another problem was that the national tallying exercise in Bomas of Kenya was not transparent because neither party agents nor domestic or international observers were allowed to observe the entering of data from the verified result forms into the computer system.

Voters' education started late. This raised concern because of the six-fold elections which was widely believed to put voters under stress. In the past a maximum of three different elections were conducted at the same day. However, the number of rejected (invalid) votes was low (0.9 %) and fully within the international standards. It showed that voters might have taken a longer time to mark their ballots but they managed the process quite well.

A special accreditation for the national tallying centre, situated a bit outside Nairobi at Bomas of Kenya was required. The FECCLAHA Executive Director and the Brot für die Welt Team Leader were provided with it.

### **Gender**

The IEBC has not yet compiled data on the number of female candidates. Women have always been underrepresented in Kenya's Parliament. In the 2013 Elections only 16 female members made it into Parliament (5.5 %). In the 2007 Elections 15 female MPs were elected (210 seats: 7.1 %). Female candidate was neither elected into the Senate nor was elected a governor. In order to increase the number of women, some have been appointed to the Parliament and the Senate. For the county assemblies a special election for female candidates was conducted to ensure that at least one woman will be elected to any of the 47 county assemblies. There are no consolidated statistics on how many women were elected to the county assemblies.

Women took a fair share of polling agents and in the group of Presiding Officers and polling staff. The Team saw a lot of able female Presiding Officers who were committed and qualified.

The Electoral Commission does not collect data on the share of female voters. According to the teams' observations there was a high participation of women in Nairobi and Eldoret.

## **Election Monitoring**

### **Election related activities**

#### **The Team visited the following institutions:**

- Isaac Hassan, IEBC, Chairman (Team Leader)
- Ms. Lillian B. Mahiri-Zaja, Vice Chairperson, IEBC (TL)
- Dr. Joel Mabonga, Director of Civic Education and Partnership, IEBC (TL)
- Joaquim Chissano, Former President of Mozambique, Head of the AU Observer Mission (Team Leader)

- Friedo Sielemann, German Deputy Ambassador, Nairobi (TL)
- Augustine Lotodo, Running Mate, NARC-Kenya (TL)
- Prof James Ole Kiyapi, Presidential Candidate, Restore and Build Kenya Party (RBK) (TL)
- Winnie Kinyua, Running Mate, Restore and Build Kenya Party (RBK) (TL)
- David Wanjohi, Executive Director, SAFINA Party (TL)
- Herbert Mwachiro, Chairman, Kenya National Congress (KNC) (TL)
- Ms. Petronila Were, Chief Executive Officer, United Democratic Forum (UDF) (TL)
- Joshua Odongo Onono, Running Mate, Alliance for Real Change (TL)
- Onyango Oloo, Secretary General, The National Alliance /Jubilee Alliance (TL)
- Ms. Jacinta Wanjiru, Personal Assistant to the Secretary General, The National Alliance/Jubilee Alliance (TL)
- Franklin Bett, Campaign Chairman, Minister of Roads, ODM/CORD (TL)
- Eliud Owalo, Chief Campaign Manager, ODM/CORD (TL)
- Prof. Lawrence Gumbe, Chief Presidential Agent, ODM/CORD (TL)
- Ms. Judith A. Sijeny, Legal Advisor, ODM/CORD (TL)
- Ms. Zleikha Hasse, National Youth Coordinator, ODM/CORD (TL)
- Ajiki Michael Arawo, County Representative Candidate, ODM, Thika (TL)
- Electoral Commission: Press Conference on 9th March 2013 (declaration of results) (TL)
- Workshop of all elected CORD candidates at Kenya International Conference Centre (TL)
- Diakonie Katastrophenhilfe/Emergency Relief, Marino Jansen (Director of Africa Office, Nairobi) and Martin Kessler (Programme Director) (Niko Wald)

#### **Training/Briefings/De-briefings:**

- IEBC-Workshop on the Elections for domestic observers (Team Leader)
- FECCLAHA Briefing Workshop (Team Leader and Niko Wald)
- Presentation on “Legal Framework Guiding Election Observation” on FECCLAHA Briefing Workshop (Team Leader)
- The TL conducted a comprehensive training sessions for the Team
- The TL briefed the Team on the current political situation
- FECCLAHA Regional De-Briefing (Team)
- FECCLAHA National De-Briefing (Team)

Additionally the team had briefings with the constituency/county administration of the IEBC and the local police stations in their various deployment areas.

#### **Party Conduct and Campaign**

The campaign went on peacefully and without major incidents. According to all interviewed political stakeholders it was the most peaceful campaign since the introduction of a multi-party-system in the early 1990ies.

There were, however, some incidents of intimidation and sporadic violence between supporters of different political camps but they lacked an endemic and systematic nature. As a rule, the campaign posters were not tampered with.

While the two big players (Jubilee Alliance and CORD) described the playing field as level, most of the small parties complained about the uneven access to campaign resources. They claimed that the elections could not be fair because of their lack of resources while the big alliances were buying voters with their immense funds.

The Team visited the final campaign rallies of the Jubilee Alliance with Uhuru Kenyatta (Niko Wald) and of CORD with Raila Odinga (Team Leader) in Nairobi on 2<sup>nd</sup> March. Both functions went on peacefully and orderly without inflammatory language.

### **Media**

All parties were able to access the media freely and publish advertisements which had to be paid for. There is a vibrant private media landscape in Kenya. However, most of the media houses belong to politicians or are in one way or another affiliated to political parties. Some smaller parties complained that they had no access to certain media houses because of political affiliation. Another problem raised was that they had no sufficient funding to place adverts in the media. There were, however, no complaints about state interference with the media freedom.

There was a keen interest of domestic media in our work as FECCLAHA international election observers. The Team was told many times that our presence and our work were considered as very important. Our commitment as an ecumenical observer group supporting our Kenyan partners was highly appreciated. The Team was advised to be extra vigilant because of the rigging in the 2007 elections.

Before, during and after the election the media took great efforts in coverage. Newspaper published texts about the process of election itself, about news from the IEBC, but they also investigated possible fails of officials or failures of the system. During the election TV and radio stations aired the results and featured a nearly 24/7 live coverage from different places around the country. Most of the media had their own peace campaign, with printed advertisements of aired versions of their commitments to fair and unbiased election coverage. International media was widely present during the election.

The IEBC's website was remarkable and offered a lot of information to voters and to the interested public. The data was even available for third parties who wanted to develop further online instruments like data maps. The website offered the finalisation of voter registration as well as results after the election. Therefore, the website can be seen as a role model for upcoming elections.

## **Observations on the General Elections 4<sup>th</sup> March 2013**

On 4<sup>th</sup> March 2013 the team visited 30 polling centres and 63 polling stations in the regions

- Nairobi, Kibra Constituency, 15 polling centres and 36 polling stations (Heiko)
- Nairobi, Nairobi City, 6 polling centres and 13 polling stations (Niko)
- Eldoret, Ainabkoi and Kesses Constituency, 9 polling centres and 14 polling stations (Birgit)

## **Preparations**

Generally, election materials arrived timely and in sufficient quantities. This included the Voters Register and the Biometric Voter Identification Device (BVID). In a number of stations the BID was not working because the access code to start the machine was not provided in time (Kibra, 278-14-5+2, 278-15-1) In one polling station the machine did not arrive in time. The order to solve this at the evening before was to use paper/hardcopy list.

In one station the gate to the polling station premises was found locked and had to be broken (Kibra, 278-14-4). Before voting commenced, short prayers were said asking for peaceful and credible elections.

In Eldoret and the other places observed there were no signs of party campaign material around the premises of the polling centres.

## **Set up**

When voting started at 06:00 a.m. people had already queued at the polling stations. Voters were very eager to cast their votes. Most polling stations were placed in school buildings however some were outdoors and covered with a tent roof. The set up procedures in all polling stations observed were not conducive for the secrecy of the ballot because the polling booths were placed with the open side towards the room. The voter was supposed to shelter the ballot papers with his body. However, this did not work satisfactorily because of the fact that six large ballot papers had to be handled. Most voters were overwhelmed with this and the secrecy wasn't always given. However it should be noticed that nobody seemed concerned about it.

Another general problem observed was related to the colouring of the ballot papers and the ballot boxes. While the idea to match the colours of the ballot papers with the colours of the boxes (President – white; Governor – blue; Senator – yellow; County Woman Representative – purple; Member of Parliament – green; and County Assembly Ward Representative – brown) was good, the colours used were too faint. Voters got confused and some opened their marked ballots in order to identify the correct box by reading. By doing that they compromised the secrecy of their ballot. A small number of ballot papers were cast into the wrong box and were therefore rejected.

In many polling centres the allocation of the voters was not done adequately. People queued for hours in the wrong queue within the correct centre and were told to queue again at the correct polling station or to jump the queue and proceed immediately into the correct place. However, this was not always a problem of the layout. In most polling centres the alphabetic allocation was noticed by stickers. But most of the voters did not easily befriend themselves with this system. This caused serious frustrations and queue control problems which in some cases had to be dealt with by the security forces. In at least four polling centres in Nairobi county information posters were missing or not easily to be seen.

In Eldoret the team arrived at 05.30 am at the first polling station (0721/050\_01) in order to observe the opening. Large queues were already filing up, everybody waiting patiently.



Polling staff was in place, relevant election materials were handed out in time and were controlled by party agents and other observers. Voting started at 06.10 am. At the beginning, the process of registration was very slow. The use of the voter register for the biometric identification caused some problems.

## **Voting process**

### **General observations**

In general, the process was orderly and peaceful however in quite a number of polling stations very slow. This was caused by the extremely high voter turnout (86.3%) and also by the fact that the BVID did not work properly in most of the stations observed. In some places the machines did not work at all. In others they were used sporadically because of lack of electricity. The BVIDs were operated with batteries but the two sets of batteries provided, run out after a few hours. There was no way to recharge the batteries inside the polling stations because there were no plugs inside the classrooms. The machine had to be recharged in the headmaster's office and was not available for this time.

In some cases observed the voter's name did not appear on the BVID but it was on the paper voter's register. In a few cases it was the other way round: Names appeared in the BVID but not on the paper voter's register. Especially the latter caused some concern because duly registered voters could have been disenfranchised when the machine was not working. A few such complaints were received by the Team.

Even where the BVIDs worked the scanning did not work and the voter's ID numbers had to be entered manually. This was time consuming. Especially in the mornings a lack of experience with applying fingerprints was observed. This caused many voters to have their fingerprint read, after trying the process several times.

The seals which were applied to seal the ballot boxes were of low quality. A number of them broke when applied. The official seals could be removed in some cases since they were assembled the wrong way.

Polling staff was generally helpful, knowledgeable and committed. However, quite a number of polling staff had no badges, making it difficult to identify the right contact person in a station and making it nearly impossible if unauthorised people were in a certain station, i. e. for assisted voting. Security personnel were professional and friendly. There was at least one security officer on duty at almost all the polling stations visited.

The official procedures for assisted voting were problematic. According to the regulations the Presiding Officer was allowed to assist if the voter didn't bring any trusted person with him. If the PO was requested to assist, all party agents were allowed close to the booth to witness the marking of the ballots. This was a clear contradiction of the privacy of the secrecy of the vote which is enshrined in the Constitution. When the Team Leader took this problem up with the IEBC it was downturned because it was too late to change the regulations.

The Team observed that elderly, handicapped, pregnant women or women with small babies were given priority which was perfectly in order with the regulations.

The team found Domestic Observers to be present in many of the Polling Stations. In some of the stations in Nairobi (Kibra) the team met domestic NCKK observers. A few stations had been visited by International Observers too.

The number of party agents was not restricted. In many cases there was more than one party agent per party present at a time. Usually the two big alliances (Jubilee and CORD) had agents present in all polling stations visited. There were generally between 5 and 13 party agents present in a polling station. Some party agents of smaller parties were not committed. They didn't even know which party or candidate they represented and had to check it in their accreditation letters (i.e. Kibra, 278-23-1; 278-21-1). Some party agents had no badges.

Our presence was welcomed by the polling staff and even more by the voters who asked us to be vigilant. Everybody seemed alerted with regards to the 2007 Elections which were rigged and which caused serious violence. For many it was their greatest wish to have credible and peaceful elections. It did not matter whoever wins.

### **Specific observations:**

#### **Nairobi/Kibra Constituency:**

Kibra Constituency was considered as a hot spot because it contains the largest slum of Nairobi which is mainly populated by members of the ethnic group of Luo.

The most serious incident was observed at polling station Upper Hill Secondary School (278-11-2). When checking the result sheets at 16.30 p.m. the TL discovered that all the six different sheets for the six elections had already been filled (except for the results) and signed by the Presiding Officer and all ten party agents present. This was like signing a blank cheque because with the signatures the forms became a legal document. The PO called the IEBC Supervisor and asked the TL to talk to her. It was resolved that the TL would observe the counting at that polling station because there was no way to exchange them with fresh ones. This was done. The TL observed that only the correct and proper results were entered in the pre-signed forms after the counting. Therefore there was a potential risk for rigging but since the issue was solved nothing serious actually happened which could have affected the credibility of the process.

At stations 278-10-8+9 – an outdoor station with tent – all seals were not fixed properly and had to be re-fixed after the TL mentioned to the PO about the problem. At station 278-12-3 a seal of the parliamentary ballot box was broken. It was replaced in the presence of the TL.

At station 278-13-2 the assisted voting procedures were flawed. The PO assisted an old lady but only allowed one of the party agents to witness. At 278-14-2 the PO (Sarah Achieng) assisted voters without allowing any party agents to witness. At station 278-15-2 the PO explained a voter the ballot paper inside the booth although he didn't ask for assistance.

A violent voter threatened a polling officer inside the polling station (278-14-5) and was about to beat her. The TL calmed down the situation. At station 278-16-3 an elderly voter voted outside the booth near the window because of poor eyesight.

Armed security staff was present inside the polling station (278-05-6 and 278-20-06). Unarmed police was inside station 278-22-3. However, they did not interfere with the voting process.

### **Nairobi City County**

In the polling stations observed and visited the people waited calmly and peacefully during the day to cast their votes. Queues with a length of several hundred meters were quite often to be seen, making the high overall turnout visible.

The biggest problem in Nairobi City County was with voter identification. In one case, the BVID was not working at all (276-1379-014). In five cases, the BVID was at least partially not working. This reduced the faith the waiting voters put in the process at all and caused long queues since it took – in some cases – several hours to solve the problems and to get the queues moving.

In four polling stations (277-1381-004, 276-1380-021, 276-1379-014, 274-1369-022) the secrecy of the vote was reduced since the voting booths were placed with their open side towards agents, officers and observers. In one case disabled and elderly voters were to cast their votes on chairs outside the booth, despite being assisted (276-1379-014). In one case the ballot boxes were too full since so many votes had been casted, giving the voters troubles to insert their ballot paper without it being seen by others (277-1381-004).

In two cases Presiding Officers kept demanding additional letter of authorization from the observer (277-1381-004; two streams). The issue could be solved by presenting the observation ID badge again and by offering to contact the Team Leader or to inform FECCLAHA's head office.

Some agents obviously did not care much of their role to control the election process and to collect data enabling their parties or coalitions to cross check the results.

Armed security staff was present inside the polling station (276-1379-014). However, they did not interfere with the voting process, and the presence was in accordance with the party agents.

### **Eldoret/Ainabkoi and Kesses Constituency:**

The area around Eldoret was one of the hotspots in the post-election violence 2008. Inter-tribal conflicts (Kikuyu and Kalenjin) arose and led to an alarming explosion of violence with many people killed and houses and whole settlements destroyed. Social

and commercial activities had been disrupted. Most of the poor Kikuyus left in 2008, Nevertheless, they have been going back and they are entitled to a lot of the land that they were sold by the Kalenjin. Meanwhile Kikuyus and Kalenjin and some other tribes live peacefully together. However, for the 2013 Elections, Eldoret was still seen as a critical area. Therefore FECCLAHA and its partner, the NCCK, decided to send international observers in this area. The International Observer was accompanied by her domestic counterpart Jonathan Serem of NCCK in Eldoret

At some polling centres (0730-061, 0721-072, 0721-062) minor crowd control problems arose as voters did not know at which station to queue. The situation improved after 11 am because by that time the queues had significantly reduced and the polling staff had gained some routine in its procedures.

Voter education was apparently insufficient – a number of voters were not aware of the complex voting procedures of the six elections and the polling staff had to explain them over and over (i.g.0729-057, 0721-068, 0721-072).

Some polling clerks had a problem with the BVIDs and had to use the hard copy of the register. At three polling stations visited, there was a cut down of electricity (0720-030, 0721-046, 0721-072). The charged batteries were empty after two to three hours. They used the hard copy of the register as well. At one polling centre with two streams (0730-061), one BVID did not work. The staff decided, to place the remaining BVID outside the stations and to register outside for the two stations, which worked well.

A great number of assisted voters were observed. These were mainly elderly people and some handicapped. We were told that especially illiterate people had to be assisted.

There were unfortunately no ink pads for thumb prints in the voting booths provided. When we asked, one of the P O told us that, these will be brought when needed. He assured us that this was available.

Another problem was the fade colours of ballot boxes and ballot papers. Many people found it difficult to distinguish these fade colours in order to find the right box to cast their votes.

### **Ballot count**

Voting closed at 5 p.m. According to the law every voter who joined the queue before 5.00 p.m. was allowed to vote. However, at Upper Hill Secondary School in Kibra, Nairobi (278-11-2), there were no voters in the queue at that time. During Election Day the several hundred voters at KCCT/MMU Mbagathi polling centre (047-277-1381-004) had had their chance to cast their votes during the day. At 4.30 pm only about 50 people were waiting in the queues of the four streams, with the queues constantly getting shorter. The counting process was generally orderly, transparent and in a constructive and amicable atmosphere. There were no disputed votes and no disputed rejected votes. The Presiding Officer clearly put a lot of efforts in having the procedures transparent and credible. All steps were explained. Everybody had the chance to have questions being answered. All party agents and observers were present during the entire process which was concluded only at 2.30 a.m. However, a

few of the agents were overwhelmed by sleep but this did not quite affect the counting. In KCCT/MMU Mbagathi polling centre the counting went on until early morning, leaving the officers and officials more and more exhausted and maybe opening up the space for errors due to being tired.

There were a few ballots found in the wrong boxes. Since there was no provision in the result sheets on how to account for those, they were packed separately in an envelope but they were not counted, not even as rejected votes. According to the law such misplaced votes are regarded as rejected votes. The fact that this had not been done might have affected the number of rejected votes and could easily have affected the outcome of the presidential results. Taking into consideration that only one misplaced presidential vote in every second polling station would have compromised the 50% threshold it is not clear how this problem was reconciled by the IEBC or the Supreme Court.

It should be noticed that the team saw a number of ballot papers which were deliberately be spoilt because the voter did not want to vote for any of the candidates. This is a legitimate way of participating in the election but should not be considered as lack of voter education.

In a significant number of polling stations arithmetical errors on the result sheets appeared. Those had to be corrected during the tallying.

The electronic transmission of results by mobile phone did not work. The system provided by SAFARICOM broke down shortly after transmission started.

In Eldoret the vote count was observed at Arnesens Primary School (0721- 050-01). The station closed at 5:00 pm. The last voter came in at 4:55 pm to cast his vote. The counting process was transparent. Accredited party agents and observers had the chance to formally object at any moment of the process. The decision whether a ballot is valid or considered as rejected was made in a liberal way. However, some votes, obviously marked by illiterate persons, were rejected because the mark resembled a kind of signature.

The counting of six different elections was a lengthy and exhausting procedure after an already long voting day and required a lot of concentration from all people present. At Arnesens School, by midnight the polling staff had managed to count only three of the six boxes (Presidential Election, National Assembly, Senator).

The day after election at 1:15 pm only the results of the presidential election for one stream were published outside the station.

### **Tallying procedures**

In the observed collating centres at constituency and county levels the tallying process was generally transparent, credible and carried out professionally.

On the constituency level the final results of the parliamentary race were proclaimed as well as the final results of the county assembly member. Talled results of each candidate of the post of governor, senator and woman representative were forwarded

to the county tallying centre and those of the presidential to the national tallying centre.

The observed tallying went on calmly and transparent, but there were in some cases obvious problems with the entering of the results displayed by video projectors (KCCT/MMU Mbagathi 047-277-1381-004). The forms displayed to the public were not the ones that were currently edited and being worked on, which led to discussions among the witnessing agents and raised concerns. In one case the announcing of the results had been postponed for more than 24 hours (Kilimani Primary School, 047-275-1371-003) which was obviously a frustrating experience for both IEBC officers and the public. Nevertheless, after the failure of the electronic systems all tallying centres made use of the hardcopy fallback sheets.

The tallying at the Eldoret tallying centre started in the morning of 05<sup>th</sup> March. Party agents, candidates and other observers were present during the checking of result sheets. The results were entered into a computer system, proclaimed and displayed. The observers were not allowed to observe directly the entering of the results into the computers. After this procedure, the ballot boxes were removed and the Presiding Officers were released.

The major problems occurred at the National Tallying Centre at Bomas of Kenya near Nairobi where the tallying of the presidential votes was carried out.

In fact, at around midnight of 5<sup>th</sup> March the electronic transmission of results collapsed (with hints of “hacking”) and on 6<sup>th</sup> March midday the political parties agreed with the IEBC to declare all electronically transmitted results null and void and start the tallying process afresh on basis of the hardcopy result sheets. After that the problems at the National Tallying Centre started. Our team was not allowed to observe the entering of results into the computers. The TL insisted but was told by the Chair of the IEBC that no observers are allowed to observe the process closely. (“This is not our policy”). The TL was told to sit on the gallery which was declined because no meaningful observation was possible from there. It was confirmed to the TL that neither international nor domestic observers were allowed inside that Hall at Bomas where the results were entered into the computers. Party agents were inside the hall but also not allowed to reach near the computers. This alone affected the transparency of the tallying process seriously. Taking into consideration the narrow margin (Kenyatta only had 8.419 votes above the required 50%+1) even small errors or omissions could have affected the results seriously.

After the electronic transmission of results had broken down, the Team collected as many presidential results as possible from the constituency tallying centres in order to compare them with the final results released by the IEBC. In one case (Embakasi Centre) the Presiding Officer told the TL on the phone that the “latest results” were with him at the National Tallying Centre. When he was asked whether those figures are different from what was announced on constituency level he just repeated that only him had the latest results. A crosscheck of the data, however, did not show any discrepancies.

At the time when electronic transmission of results had broken down, other international observer missions (AU, EU, Commonwealth, Carter Center) released statements that the elections were free and credible. (EU statement:

<http://www.eueom.eu/files/dmfile/eom-kenya-preliminary-statement-6-march-2013-en.pdf>). This statement, which outlined only smaller irregularities and technical problems, was done before the tallying process was concluded. These preliminary statements were ill-timed because they were widely perceived as premature since the process was not even concluded. Some of the (local) media concluded – incorrectly - that the EU assessed the entire election as “free and fair” (in line with the African Union, Commonwealth and others). According to our partners even a preliminary statement would have been more useful after the conclusion of the elections and not while the tallying was far from being concluded. Naturally the tallying of results is the most sensitive part of an election in terms of irregularities or rigging.

The fact that the Team was present until the tallying process was concluded and the complaints of the major political contender, the CORD Alliance, were heard by the TL was highly appreciated, especially after most of the international observer missions had come up with premature statements and had left (such as the AU).

### **Complaints of the CORD Alliance**

The leadership of the CORD Alliance did not accept their defeat in the elections. The reasons given were alleged widespread fraud and rigging especially in the tallying process. The TL visited their Head Office and had long discussions with Mr. Franklin Bett, Campaign Chairman, Minister of Roads, Eliud Owalo, Chief Campaign Manager, ODM/CORD and with Ms. Judith A. Sijeny, Legal Advisor, ODM/CORD. They informed the TL on their views and their specific complaints. However, evidence was not shown because the case was in the process of being submitted to the Supreme Court. They had lost trust in the IEBC but maintained a certain amount of trust in the Supreme Court and the Chief Justice.

Contrary to the 2007 elections the conflict was taken to the Supreme Court and not to the roads. This demonstrates a much more mature approach. Compared to the last elections there was much less violence. When the Supreme Court throw out the case on 30<sup>th</sup> March even Raila Odinga showed statesmanship when he accepted defeat.

### **Media work of the Team**

The TL was interviewed by Deutschlandfunk on Election Day in a live transmission. Another interview was given to Deutsche Welle, English programme, on the same day for the English Programme on Africa. He was also interviewed by Radio Berlin-Brandenburg on 5<sup>th</sup> March. A telephone interview was given to Dagmar Dehner of Tagesspiegel, Berlin, on 6<sup>th</sup> March 2013, triggered by the constant live ticker coverage provided by Niko via Twitter. On Election Day the TL was interviewed by the Nigerian TV channel GOTEL Nigeria. Moreover, the TL was interviewed by Kenyan broadcaster Citizen TV.

Via Brot für die Welt's journalist platform Niko provided more than 30 press photos, about 15 audio interviews (with the TL, Elizabeth Loy Kisiigha Zimba (Executive Director FECCLAHA) and Marino Jansen and Martin Kessler from Brot für die Welt's sister organisation Diakonie Katastrophenhilfe) and video footage for media

professionals. Audio and video footage will be available in future as core information on Brot für die Welt's election monitoring missions in general. With more than 40 postings on Twitter he promoted the media platform and kept more than 1,300 followers up to date. Brot für die Welt published one media releases to announce the monitoring. It proved that being on location is a big asset for providing real time, convincing and authentic information for journalists.

For donors and the interested public Niko posted daily on Brot für die Welt's blogging platform. He published five texts, with photos, statements and documents. Altogether these texts were visited about 2,000 times. Teaser texts and photos were shared via Facebook, generating a lot of buzz in the social media sphere and generating interest in this issue of our work. Some of Niko's texts and photos are likely to be published in the donor's magazine ("Der ferne Nächste") and in the annual report of Brot für die Welt. Niko will create a video, available via the website, Youtube and Facebook, that explains the monitoring election mission in Kenia. In the video, the cooperation between FECCLAHA and Brot für die Welt will be stressed. For the next months one edition of Brot für die Welt's monthly audio podcast will be dealing with election monitoring, using the audio statement Niko has been collecting.

### **Cooperation with FECCLAHA**

The Team would like to commend the excellent cooperation with the FECCLAHA Executive Director, Ms. Elizabeth Loy Kisiigha Zimba and with the Programme Director, Mr. Mutua Mulonzya and their team. The Executive Director herself showed a keen interest in the work of the Election Observers and consulted the Team Leader on all relevant issues. The Programme Director was professional and committed. He briefed the TL on the political situation and all relevant election related issues. He even managed to get the accreditations of the Brot für die Welt Team after the IEBC had already closed the process. Before elections there was a comprehensive briefing of all FECCLAHA International Observers. After polling day there was a professional debriefing. This clearly demonstrated the pivotal interest of our partners in the elections and in our work. The Team would like to thank Ms. Elizabeth Zimba and Mr. Mutua Mulonzya and their team for the warm welcome and great hospitality in Kenya.

We were assured by the FECCLAHA Executive Director and the Programme Director that our work was highly appreciated and relevant. With the presence of domestic and international ecumenical observers the role of FECCLAHA in the East African region and especially civil society in Kenya was strengthened and the visibility of Fellowship improved. Since a vibrant and professional civil society is the backbone of democratic consolidation both FECCLAHA and the NCKK have achieved a lot. We were not the only international observers of FECCLAHA but the only ones from outside the region. This was perceived as a sign of international solidarity and friendship.

In Eldoret the observation in the area was coordinated by NCKK Eldoret. There were meetings with the coordinator, Mr. Daniel Kimutai, and with Jonathan Serem, who was chosen to accompany the Brot für die Welt/EED-observer during Election Day. On the route for the observation on election day was agreed and the day before election nine polling centres were visited. For the day of election, the programme coordinator of NCKK joined the team. A regional debriefing took place on 05.03.2013



in the afternoon, together with two other international FECCLAHA observers, one from Uganda, the other from Ethiopia. Cooperation with NCKK Eldoret was excellent.

## **Conclusions**

According to our observations the General Elections were despite the weaknesses and problems mentioned in this report peaceful, free, transparent and overall credible. However, this assessment does not include the tallying process of presidential votes at the National Tallying Centre. Since the Team and no other observers or party agents were allowed to observe the entering of results into the computers, this process was not transparent and therefore not credible. Taking into account that the tallying is one of the most sensitive parts of an election the policy of the IEBC not to allow observers to do their job is not acceptable. The TL insisted but still wasn't allowed.

The presence of international observers was crucial because of the very close outcome and the atmosphere of suspicion, distrust and tension especially among the two alliances Jubilee and CORD. Small irregularities could have affected the final results because of the narrow margin with which Kenyatta crossed the 50%-line (50.03%). Otherwise a run-off election would have been necessary.

The presence of international observers also had a strong symbolic meaning. It encouraged the voters as well as the stakeholders to actively take part in the democratic process. Their presence was a major factor to build up not only the voters' trust into the process but also to reduce distrust among the political parties. This was especially important with regards to the rigged 2007 General Elections.

The relations between the team and local as well as international ecumenical observers were excellent.

In Eldoret area, which was seen as a hot spot, Election Day was peaceful. The election process – except for the tallying which was not transparent – went on quite well and peacefully, however, there were some problems and weaknesses as mentioned above. The polling staff was committed and did their best.

## **Recommendations**

- The IEBC needs to buy new BVI devices which should not be reliant on notebook computers. The fact that most of the machines failed miserably across the country shows the quality problems. In Ghana similar “stand alone” machines worked much better in the 2012 elections.
- BVI devices should not rely on electricity at all but should work with batteries in order to prevent interruption of service. There should be facilities to recharge batteries.
- Codes to start the BVI devices should be made available before voting starts

- There should be a sufficient number of BVIDs for backup available at constituency level. It should be ensured that a broken machine can be replaced within an hour in order to maintain a smooth voting process.
- Persons who are rejected by the BVID should be allowed to vote if they can be identified by names and, photographs in the hard copy register. Their names should be taken down in a special list in order to investigate such cases after elections.
- The electronic transmission of results needs to be revisited or even abolished. Special care should be taken for the secure and tamper free transmission of the results via the internet.
- If more than three elections are held at the same day, the number of registered voters by polling station should be reduced to 300-400 (as successfully done in elections in Sierra Leone 2012). This makes the process manageable and speedy.
- The procedures for assisted voting should be adjusted in order to prevent compromising secrecy of the vote. This could be done by not allowing Presiding Officers or other polling officials to assist voters. Voters could ask any other voter to assist.
- The colour and quality of ballot papers (unmistakeable colours, sufficient thickness) and the quality of the ballot box seals should be increased.
- Domestic and international observers as well as party agents (limited numbers with special accreditations) should be allowed to observe the tallying process closely, including the entering of data into the computer system.
- Presiding Officers should be trained not to sign blank result forms.
- Party agents should be properly trained including not to sign any blank result forms or other sensitive documents which could be abused for rigging.
- When there was more than one polling station in a polling centre, voters queuing were often confused where to queue or were not aware that there will be several queues divided by alphabetic order of the surnames of the voters. When Polling Officers or Security Personal had to re-organize the queues people were irritated or even frustrated. It should be considered to communicate clearly where to queue.
- The official IEBC seals should be of better quality and POs should be trained on how to apply them correctly and tamper free.
- The number of domestic observers should be adequately increased to cover all polling stations. A sufficient number of them should receive special training to observe the tallying process.
- The observation time for the team of international observers should be increased, in order to observe the atmosphere in the area before Election Day, to have a look at party rallies and to be ready to report to media and German public, which is demanded increasingly.