



SITO
States In Transition
Observatory
www.statesintransition.org

Election Watch | Kenya

October 2012

MEASURING THE KENYAN ELECTORAL ENVIRONMENT ACCORDING TO THE SADC GUIDELINES GOVERNING DEMOCRATIC ELECTIONS

On the 17th of August 2004, the Southern African Development Community (SADC) leaders adopted the "[SADC Principles and Guidelines Governing Democratic Elections](#)."

The Election Watch is based on the SADC principles and guidelines for conducting elections. It holds countries to the standards that they originated and agreed to abide by as members of the regional community.

Idasa notes that Kenya is not a member of SADC. Our position is that this does not minimise the effectiveness of the Election Watch as a tool to measure progress towards a more democratic dispensation in the country.

The Election Watch is designed to aid civil society groups in Kenya in holding governmental institutions accountable and ensuring a free and fair election.

SADC principles for conducting democratic elections:

	Divergence/Obstructive Legislation	Compliant
2.1.1 Full participation of citizens in the political process	• Kenyan police have been accused of being responsible for killing 8000 alleged members of Mungiki between 2002 and 2007; • Chapter 3, Constitution of Kenya 2010; • In spite of the 2007 election fiasco Kenyans still have faith on elections as a medium for institutionalizing a democratic system in the country. The support for democracy as the preferable form of government, and for elections as	☒ Yes ☐ No

	the best means to choose a government, remain at very high levels; • 31 percent of Kenyans are yet to decide who they will vote for in the next election while 42 percent are not affiliated to any political party.	
2.1.2 Freedom of association	• No legal constraints but police have been accused of violently intervening with protest marches following 2007 elections; • The police force still denies human rights activists' requests for meetings or disperses meetings; • The Societies Act 2009 requires that every association be registered or exempted from registration by the registrar of societies. The 2008 Political Parties Act, which increased the fee for registering a political party to 600,000 shillings (\$8,000), resulted in a decrease in the number of political parties from 138 in 2007 to 47 by end of 2008.	☐ Yes ☒ No
2.1.3 Political tolerance	• 2007 elections and resulting violence have shown that there are deep ethnic division between the Kikuyo and Luo and between the Kikuyo and the Kalenjin which have politicized ethnicity.	☐ Yes ☒ No
2.1.4 Regular intervals for elections as provided by the respective National Constitutions	• Elections have been held regularly in the past. The next elections were due to take place in 2012 but have been moved to 4 March 2013, 60 days after the end of the current power sharing mechanism; • Constitution of Kenya Article 81 outlines the principles of an electoral system which include free and fair periodic elections by secret ballot, free from violence, intimidation, improper influence or corruption, conducted by an independent body and administered in a transparent, impartial, neutral, efficient, accurate and accountable manner.	☒ Yes ☐ No
2.1.5 Equal opportunity for all political parties to access the state media	• Part III section 41 of the Election Act of 2011; • Part IV section 22 of the Political Parties Act 2009; • In the run up to the 2007 elections by September 2007 print media in general give more coverage to Party of National Unity (PNU) and its affiliate parties than other competing parties. The pattern is also evident in the coverage of parties on mainstream radio, with PNU receiving the most coverage, ODM second, and ODM-K a far third. Vernacular radio stations provided more opportunity for ODM than PNU in three out of five stations. Incumbent Kibaki received the most coverage in all types of media, followed by Raila Odinga, and Kalonzo Musyoka coming a distant third.	☐ Yes ☒ No
2.1.6 Equal opportunity to exercise the right to vote and be voted for	• Part II and III of the Elections Act of 2011; • Political parties Act 2009; • The Office of the Registrar of Political Parties plans to conduct training programmes for members of the Political Parties Liaison Committees on the values and principles of our electoral system, election related laws and Electoral Code of Conduct. In addition, the Registrar will train duly nominated candidates and their polling agents in all Counties on their roles before, during and after the elections;	☒ Yes ☐ No

	• Nguyai MP had Facebook blogger Njuguna arrested for posting on Facebook that he is a dog in March 2012 (these are examples of citizens being intimidated for commenting on an MP); • Njuri Ncheke council of elders have been accused of being used to control Meru county politics in the Igembe North District (this is traditional leaders telling their villagers etc who to vote for).	
2.1.7 Independence of the Judiciary and impartiality of the electoral institutions	• New constitution provided for chief justice, deputy chief justice, director of public prosecutions and attorney general; • Appointment of chief justice and deputy was done transparently in May 2010 by the Judicial Service Commission. Not so transparent for director of public prosecutions.	☒ Yes ☐ No
2.1.8 Voter education	• Part III section 40 of the Elections Act 2011; • To be carried out under the mandate of the Independent Electoral and Boundaries Commission.	☒ Yes ☐ No
2.1.9 Acceptance and respect of the election results by political parties proclaimed to have been free and fair by the competent National Electoral Authorities in accordance with the law of the land	• In 2007 when President Kibaki was announced the winner, supporters of Raila Odinga took to the streets in violent protests, and the security forces responded violently. After mediation facilitated by a Kofi Anna led team, a coalition government was formed with Kibaki as president and Odinga as Prime Minister; • The Assumption of the Office of President Bill, 2012.	☐ Yes ☒ No
2.1.10 Challenge of the election results as provided for in the law of the land	• Part VII Election Dispute Resolution of the Elections Act 2011.	☒ Yes ☐ No

Assessment of electoral processes

	Divergence/Obstructive Legislation	Compliant
Voter registration	• Part II, Elections Act 2011; • Article 38 (3) of the Constitution of Kenya 2010; • In the 2010 constitutional referendum the voters rolls were available for inspection and correction;\ • May 2010 11 771 068 people were registered to vote in the referendum; • Voter registration exercise will take 30 days and is planned for August 2012.	☒ Yes ☐ No
Freedom of choice	• Legislation of the formation and establishment of political parties under the Political Parties Act 2011 infringes and interferes with citizen's rights to associate, belong and choose leaders of their choice.	☐ Yes ☒ No
Impediments to standing	• Part III Section 22 (1)b and (2) which requires secondary school and university qualifications; • Political parties Act 2009.	☐ Yes ☒ No

Boundary delimitations	• Article 88(4) (a) of the Constitution of Kenya 2010; • Independent Electoral and Boundaries Commission in place provided for by the Independent Electoral and Boundaries Commission Bill 2011; • The preliminary report on delimitation of boundaries for constituencies and wards was launched on Monday, 9th January, 2012 and was gazetted on March 7, 2012.	☒ Yes ☐ No
Use of public resources and political party financing	• Election Campaign Financing Bill 2012. The Bill is currently with the; • Attorney General. It is yet to be considered by the Cabinet for introduction into Parliament; • The Political Parties Act 2011; • The Public Appointments (Parliamentary; • Approval) Act 2011.	☒ Yes ☐ No
Code of conduct	• Electoral code of conduct as laid out in Chapter 7 of the Constitution of Kenya 2010; • Elections Act (No 24 of 2011); • The leadership and integrity bill 2012.	☒ Yes ☐ No

Assessment of electoral environment

	Divergence/Obstructive Legislation	Compliant
Freedom from intimidation, fear and violence	• No arrests or prosecutions made for killings of various human rights activist/lawyers 2008/2009; • Cases of police brutality against unarmed civilians recorded as late as 2011; • ICC has initiated 4 confirmations of charges hearings, two of those, Uhuru Kenyatta and William Ruto have declared their intentions to run for president in the 2013 elections; • Truth , Justice and Reconciliation Commission and Witness Protection Agency among other such bodies have been underfunded or have not been able to function well due to things such as timeframes; • Chapter 7 (I) Article 81 e ii of the Constitution of Kenya 2010.	☐ Yes ☒ No
Media freedom and access to information	• During counting of the 2007 election results various media houses were forced to stop reporting election results; • Part III section 41 of the Election Act of 2011; • Kenya Communications Amendment Bill (2008); • Article 33(1) (a) of the Constitution of Kenya 2010; • In January 2 2009, President Kibaki signed into law the 2008 amendments to the Communications Act; the amendments permitted government regulation of the media and allowed the information minister to exert political influence on the Communications Commission of Kenya (CCK), the media licensing body. Media pressure on the president resulted in the May amendment which saw the deleting of the controversial clause that allows the government to raid broadcasting stations;	☒ Yes ☐ No

	• April 2011, Kenya Gazette Notices dating back to 1906 were digitized and made available online through a partnership between Kenya Law Review and Google Kenya; • July 2011, Kenya partnered with Google Books to release 60 years of Kenya's Hansard (the official report of parliamentary proceedings) in an easily accessible and searchable online format; • July 2011 saw the launch of the Kenya Open Data Initiative (KODI) with the goal of making "core government development, demographic, statistical and expenditure data available in a useful digital format for researchers, policymakers, ICT developers and the general public."	
Role of civil society	• 1990 NGO Coordination Act; • The NGOs Co-ordination Board has developed a draft Non Governmental Organisations Bill 2012. This Bill seeks to repeal the Non- Governmental Organizations Co-ordination Act, No. 19 of 1990; • NGO Coordination Board 1992 Regulations; • Government Sessional paper 2006 ; • During the 2008 riots civil society groups were very visible in their demands to the immediate end of violence; • Many leading members of civil society have joined government post 2008; • The Interim Independent Electoral Commission (IIEC) in conjunction with UNDP Amkeni Wakenya begun the process of preparing a Voter Education Handbook on Elective positions under the 2010 Constitution in 2011. Amkeni Wakenya was established in July 2008, then known as the "Civil Society Democratic Governance Facility (CSDGF)" and works through Civil Society Organizations in the areas of democracy, human rights, governance reforms, and the integration of a rights based approach in social and economic reforms in Kenya; • During the referendum the United Nations Development Fund for Women (UNIFEM) who also manage the multi-donor funded Gender and Governance Programme (GGP) in Kenya have launched a voter registration mobilization campaign through their implementing partner organizations; • In April 2012 The Independent Electoral and Boundaries Commission launched a Sh100 million voter education campaign in preparation for the general election. Funded by United Nations Development Programme, the 'Amkeni Wakenya' campaign will be implemented by more 50 civil groups in the Rift Valley, Central and Western provinces.	☒ Yes ☐ No
Role of the security sector	• August and September 2011 Parliament passed 2 police reform bills that among other things establish a civilian National Police Service Commission which will play a role in police recruitment, training, and disciplinary proceedings making the police more accountable to the citizens; • In November 2011 parliament passed an Independent Policing Oversight Authority bill;	☐ Yes ☒ No

	• The Kenyan National Commission on Human Rights alleges that Kenya's police summarily executed at least five hundred suspected Mungiki gang members during 2007; • In the Mt. Elgon region, killings and enforced disappearances committed by the army and a militia group from 2006 to 2008 remain unpunished. Meanwhile, Kenya's security forces are committing abuses against ethnic Somalis in North Eastern province.	
--	--	--

Below is a selection of sources used for this report. The list of sources is neither comprehensive nor exhaustive.

Books

Holli Semetko Election Campaigns, Partisan Balance, and the News Media 2010

Reports by various civil society organisations and the UN

BTI 2010 Kenya Country Report

Human Rights Watch, 2008, 'Ballots to Bullets: Organised Political Violence and Kenya's Crisis of Governance', vol. 20, no. 1, Human Rights Watch, New York

Human Rights Watch, Kenya Country Summary January 2012

Electoral Institute for Sustainability of Democracy in Africa

International Crisis Group Africa Report no. 137 February 2008

UNDP

Afro Barometer Briefing Paper No. 91, August 2010

United States Government Department of State

Partnership for Transparency Fund

Government Sources

The elections act, 2011

The Constitution of Kenya 2010

Political Parties Act revised 2009

Societies Act 2009

Media reports

News24 Kenya

Standard Media

West FM