

Measuring the Quality of Kenya's March 2013 Election

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Abstract: Following the outbreak of severe violence over the 2007 vote results, the success of Kenya's democratic transition was riding on the quality of the March 2013 general election. The 2007-2008 violence prompted wide-ranging reform of the political system, electoral institutions in particular. This article examines the quality of the election, relying on a new methodology—the Election Administration System Index (EASI). Utilizing an expert-based survey, EASI allows a *quantitative* evaluation of the Kenya vote and broadly serves to advance a process of measuring election administration for comparative study. This examination finds that election administration was weakest in the preparatory period leading up to Election Day, generally fair during the vote, and then problematic afterwards with respect to vote tallying.

Key words: Kenya, election administration, African elections, democratization, election observation, democracy promotion.

Introduction

Like so many elections in countries in democratic transition, the March 2013 general election in Kenya was surely going to have a major impact on the country's future governance and prospects for development. Kenya was poised to demonstrate to the world that it had—or had not—sufficiently progressed to meet the overriding objective: to elect legitimately a president and nearly two thousand more national and county leaders while avoiding a repeat of the ethnically based post-election violence that followed the December 2007 vote, took the lives of at least 1,100 people and displaced hundreds of thousands more (Gibson, et al. 2009). Under the Grand Coalition government established in the wake of the 2007-2008 violence, Kenya had embarked on an extraordinary series of reforms aimed at establishing a fairer, more just and pluralistic polity. Now, at this critical electoral stage, no one could be certain that it would all work.

Most important, the new Constitution promulgated in 2010 provided for a radical restructuring of power and deep-seated institutional change. Civil and political rights were

strengthened; members of the judicial branch would now face higher standards to qualify for appointment; and the judiciary was accorded increased independence (EU 2013b, 8). A new, independent electoral management body—the Independent Electoral and Boundaries Commission (IEBC)—was established with broad authority, and its strong performance during the constitutional referendum and by-elections engendered public confidence (Kramon and Posner 2011, 95; Carter Center 2013b, 25). In an effort to divide power and avoid the zero-sum, ethnically driven politics of the past, the Constitution further established a senate (and thereby a bicameral legislature) and county governments with significant authority headed by an elected governor and overseen by elected county assemblies. An array of additional laws related to elections, political parties, national cohesion, Supreme Court, devolution transition, the media and public security laws, among other areas, were enacted. The desire for change as represented by the scope and depth of this reform was extraordinary.

As Election Day approached, then, the vote promised to be a historic event carrying great promise, concern and consequence for the country and surrounding region. Of the concerns, the maintenance of peace was among the uppermost. Civil society organizations were heavily involved in the peace effort; the political parties adopted codes of conduct to help preclude violent reactions; and civic education campaigns for peace were sponsored by the IEBC and other organizations. The media were extraordinarily active in promoting peace and, notably lacking full independence from the state, tended at times to censor themselves and screen out messages considered to be inflammatory (ELOG 2013, 33-34; EU 2013b, 23; Carter Center 2013b, 41-42). Election Day also witnessed the enhanced deployment of security forces. Amid the campaigning the International Criminal Court was pursuing its cases against the candidates at the top of the Jubilee Coalition ticket, Uhuru Kenyatta and William Ruto, both of whom as of

this writing continue to face charges for inciting post-election violence following the 2007 vote. The public attention created by the investigations probably helped keep Kenyans focused on avoiding a repeat of the past (ICG 2013). The March election was, then, the first major test: Could the new regime produce a credible, violence-free vote that would produce sufficient political consensus to ensure the legitimacy of the newly elected government and broader democratic system? Much was riding on the quality of the election.

Naturally, national and international attention and long-term support for the elections was widespread and strong. Kenyan civil society groups, the United Nations Development Programme and the U.S. Agency for International Development-financed International Foundation for Electoral Systems (IFES) were among the multiple organizations providing assistance. A multitude of organizations and tens of thousands of people and media outlets were likewise involved in monitoring the vote. Extensive post-election reporting was done by, among others, the Kenyan Election Observation Group (ELOG), which had also completed a parallel-vote tabulation, the African Union, European Union and Carter Center.

So what was the outcome? The election experienced serious flaws. Most had to do with the errors in the administration of advanced voter registration and difficulties surrounding vote tabulation and transmission, but there were other issues as well. Five days after the vote the IEBC declared Uhuru Kenyatta the winning presidential candidate in the first round with 50.07% of the vote, avoiding a runoff by less than 9,000 votes out of the millions cast. The opposition Coalition for Reform and Democracy (CORD) candidate, Raila Odinga, and a civil society organization quickly objected to the irregularities, challenged the vote's credibility, and formally petitioned the High Court for a new election. Following a week-long official review of the complaints, the Court ruled the election ultimately valid, despite the problems. Having earlier

acknowledged the independence of the judiciary and rejecting any resort to violence, CORD accepted the decision, and Odinga called on his supporters to respect the outcome. Some rioting did occur, but the peace held. In the end, Election Day produced newly elected officials for no less than 1,882 offices: president; members of the National Assembly; women's representatives to the Assembly, one from each of the forty-seven newly established counties; senators for a newly established upper house, one from each county; and governors and assembly representatives for each county.

ELOG found the electoral process “generally credible” (ELOG 2013, 65). The African Union Observer Mission likewise called the elections “credible” (African Union 2013, 9). Despite the shortcomings, the EU (2013a, 1) concluded that the “integrity of the vote was protected” while the Carter Center (2013a, 1) found “enough guarantees to persevere the expression of the will of the Kenyan voters”. On the contrary, as reflected by Long and his colleagues, the problems were serious enough to raise questions about the validity of the first round win by now-President Kenyatta, if not the ultimate outcome. From this perspective the election was neither “free and fair” nor credible (Long, et al. 2013, 153).

Disagreement over the difference between a “genuine” or “legitimate” election and an election that is something less than “free and fair” has long prompted scholars and practitioners to search for some means of measuring (i.e., quantifying) the quality of the process. In Kenya we again see some discord, where almost everyone agrees that there were serious shortcomings. Had the High Court decided to require a second-round vote, if not another election, that decision would arguably have been as defensible as the one that actually prevailed—a first round Jubilee coalition victory. ELOG's parallel vote tabulation the day of the election, for example, projected candidate Kenyatta's share of the vote to be between 47.0% and 52.4%, which leaves plenty of

room to argue for or against a second round of voting (ELOG 2013, 63-64).¹ Elections in Kenya and everywhere else will continue to be fallible; it is the degree of error and its impact on outcomes that motivates the search for a firm measure of quality. Measurement also allows for comparative analysis of a country's electoral system over time and among countries in the region. Efforts to reach broad consensus over concepts, scope and standards of measurement have been difficult at best, however, and the debate has hardly been resolved (Bland, et al. 2012).

To help move the measurement debate forward and to complement the extensive national and international effort to evaluate and improve Kenya's electoral administration (indeed, relying on some of the expertise that has been part of the effort), this article examines the application of the Election System Administration Index (EASI) to the March 2013 election. EASI is a practical, multi-dimensional, expert-survey based mechanism for measuring election quality and allowing comparative evaluation of countries in the developing world. It was created to bring to the fore concrete benchmarks by which to measure a country's electoral reform process, identify weaknesses in need of international assistance and generally provide insight into election processes. EASI is meant to work in conjunction with the international election and observation assistance, media reports, scholarly publications and other analyses to support as balanced and accurate an election assessment as possible; it is not seen as a stand-alone effort (Bland, et al. 2012).

This article describes the application of EASI in Kenya, its findings, and the implications of the results for Kenya's electoral system and polity. EASI's utilization here provides additional empirical evidence about the quality of a critical electoral event and, specifically, allows a quantitative assessment of the state of Kenya's election administration in mid-2013,

¹ ELOG's parallel vote tabulation projected Kenyatta's winning vote share at 49.7%, below the 50% threshold for a first round win. Odinga's share was projected at 43.4%.

which can serve as a kind of baseline for future evaluations. EASI's results in this case especially—given the amount of information, analysis and insight generated by the elections—will further serve as a measure of the value of EASI itself. The following section of this article discusses the principal features of EASI and the particular features of its application in Kenya. Section three describes and discusses the results. The fourth part of the article brings the EASI findings together with the empirical insights of the major reports on the March elections and, finally, the conclusion examines the implications of the findings of EASI's application in Kenya and implications as to future reform.

Utilizing EASI in Kenya

EASI focuses on measuring the quality of the administration of an election. The impetus behind its development and utilization is the absence of any international consensus on a methodology to regularly, transparently and sustainably measure the extent to which elections in a country in transition are well conducted. The EASI framework attempts to take advantage of both the subjective and selective aspects of past measurement efforts, relying on expert opinion while also narrowing the scope of coverage of electoral issues to a reasonably manageable level. As the Kenya experience has further shown, the methodology is straightforward and cost effective, and it provides a means to routinely and reliably evaluate elections and conduct comparative assessments (Bland, et al. 2012).

The approach is based on three core characteristics, all of which were rigorously applied in Kenya. First, EASI begins with a confidential survey of multiple experts on elections in the country being evaluated. The survey is comprised of 54 questions (as seen in Table 1, 35 of

them are used for scoring; the remainder are informational) and is administered online. The experts, national or international, can be drawn from any of a variety of occupations—scholars, the media, former election officials, international aid project directors, nongovernmental organizations and civil society representatives, among others. The only requirements are that they are indeed specialists on elections in the country under consideration, do not have a government affiliation and are non-partisan. They are identified non-randomly through contacts among the universities, international election community, the media and elsewhere (Bland, et al. 2012).

Second, reflecting the conceptual approach, the EASI survey examines three election dimensions at three points in the electoral cycle: before, during and after the vote. Electoral participation is the first dimension, covering aspects that relate directly to the public's ability to vote. Under this dimension, for example, the survey covers issues related to voter registration and residency requirements. The second dimension is competition, or the characteristics of the electoral process that relate to contestation among candidates and political parties. Examples of the survey issues covered here include candidate registration, equal access to the media and party agent access to the polling place. Finally, integrity or respect for the electoral process is the third dimension. This dimension includes survey questions related to capacity and budget control of the electoral management body (EMB), fairness of the recruitment of poll workers, and complaint adjudication once the voting has been completed. Again, the focus is on the staging of an election. Our view of electoral governance is relatively constrained, so the broader social and political context of the election is not taken into account in detail. The survey also allows for a kind of “rule-of-law” analysis. The analysis is drawn from a series of question calling on

respondents to consider the *de jure* nature versus their *de facto* application of legal requirements in five electoral areas (Bland, et al. 2012).

Table 1. Matrix of summarized questions captured in EASI Kenya scoring, by dimension and temporal categories.			
	Pre-vote	During Vote	Post-vote
Participation	1. Voter registry accurate? 2. Voter registry discriminatory? 3. Clear authority for registry maintenance? 4. Polling places known, accessible?	5. Voter identity safeguards? 6. Polling places staffed, supplied? 7. Polling places maintain secrecy of ballot-marking? 8. Voters physically secure? 9. Monitors observe ballot box sealing, ballot supply?	10. Voter appeals process enforced? 11. Monitors observe ballot box opening, counting?
Competition	12. Are party rules enforced? 13. Are candidate rules enforced? 14. Are ballot rules enforced? 15. Are financing rules enforced? 16. Are media rules enforced? 17. Boundary delimitation unbiased?	18. Party agents can challenge voter eligibility? 19. Are party agent challenges fair? 20. Party agents observe ballot box sealing, ballot supply?	21. Party agents observe ballot box opening, counting? 22. Party agents have ability to request recounts?
Integrity of Process	23. EMB budget authority? 24. EMB has budget control? 25. EMB budget and administrative capacity? 26. Poll worker bias? 27. Poll worker training?	28. Quality of poll worker security? 29. Supplies secure prior to poll opening? 30. Supplies secure during voting?	31. Voting materials secure in transit and storage? 32. Independent monitors observe central tally? 33. Results posted in timely manner? 34. Certification authority clear? 35. Meaningful EMB post-election audit?

EASI's third major feature is the component scoring. Each EASI question is slotted into one of nine cells in a three-by-three matrix format created by placing each temporal period horizontally across the top and each dimension vertically along the right side (see Table 1). The questions are designed according to a five-level Likert scale, with scores ranging from 0 to 4. The respondents' scores for each question are simply summed and divided by the total possible

points for each cell to establish a decimal, ranging from 0 to 1, for that cell. The columns and rows are then averaged to produce six totals or ratings. These nine cell scores and six ratings provide the basis for analysis of the strengths and weaknesses of the system (Bland, et al. 2012).²

For the March vote in Kenya, EASI online surveys were initiated in May 2013 and completed by October 2013. Over this nearly six-month period, 13 Kenya election specialists participated, all of whom had been contacted individually. Several others declined to take the survey, a few citing the continuing sensitivity of the topic. All of the respondents had been deeply involved in the 2013 election in some fashion. Several had been involved in Kenyan elections for years, some dating their experience to the crisis of 2007 and earlier. The respondents

included Kenyans and international specialists representing national election monitors, international election

Table 2. EASI Kenya Results: Scores by Component

	Pre-Vote	Act of Voting	Post-Vote	Totals
Participation	0.699 (0.94)	0.781 (0.96)	0.796 (0.93)	0.759
Competition	0.599 (0.98)	0.795 (0.84)	0.962 (0.96)	0.785
Integrity	0.686 (0.94)	0.766 (0.93)	0.717 (0.94)	0.723
Totals	0.661	0.781	0.825	

Note: Respondent confidence levels are provided in parentheses.

assistance organizations, nongovernmental organizations and Kenyan civil society groups.³ A few respondents provided substantial comments as part of their responses.

² None of the questions is weighted; we see no *a priori* reason for doing so. The value of combining the scores into a single country score, we feel, is limited. See Bland, et al., 2013.

³ Identification of the organizations with which the respondents are associated is based on the author's estimation of who responded. Since participation was confidential and the completed surveys were received anonymously, who precisely completed the survey cannot be determined. This author conducted three short field visits to Nairobi, one a few months prior to the vote, a second during the High Court review of the complaints, and the third a few months after the election.

In an effort to gauge the accuracy and consistency of the EASI survey responses, respondents are asked to rate the level of confidence in their responses for nine of the survey questions, one for each cell in the temporal-dimension matrix (see Table 1) to act as a representative sample. Each confidence-level question (measured on as a percentage of the total possible points on a four-point scale ranging from “strong confidence” to “strong doubt”) is meant to serve as a proxy for accuracy for the questions in that cell and, taken together, the survey as a whole. For EASI Kenya, with one exception, the confidence levels ranged from 93 to 98 %. One question in the competition dimension demonstrated a lower, 84 % confidence level. That question addressed the fairness of party or candidate challenges to a voter’s eligibility during the voting process. The lower level of confidence may reflect, as noted below, the few challenges to voter eligibility that are actually made and publicized.

Preparation for the Election: Mixed Results at Best

With respect to the following presentation of the results (see Table 2 and Figure 2), since EASI is after all aimed at identifying weaknesses in the system and since all of them cannot be addressed here, the electoral features that stand out—that receive relatively low or high scores—are the focus of the following discussion. Examining the EASI totals in the bottom row in Table 2, we see that the greatest problems were in the period prior to the vote, for which the total score (0.661) is the lowest. In the post-vote system the electoral administration performed fairly well (0.825 total score), which, pending deeper analysis below, appears to be a surprising result given the delay in the provisional vote tallies. As for the dimension averages in the far right column, integrity of the process is a clear weakness among the three (0.723), particularly in the post-vote

period (0.717), in part because of the reporting problems. Turning to the scores in each of the nine cells, the system is weakest of all in providing for fair competition prior to the election (0.599), but that same dimension improves greatly after the vote (to 0.962). There is also improvement in participation from the pre-vote through the post-vote periods. The integrity of the process, however, again dropped off after the vote (to 0.717).

The pre-vote period calls for considerable attention because, as noted, performance for all three dimensions is easily the weakest of all. The radar graph in Figure 2 also makes clear the difficulties in this area. Boundary delimitation proved to be a major controversy early on, reported on by the election observation organizations. Drawing the national legislative constituencies and the county wards, which obviously determines the composition of the electorate of the jurisdiction, is a highly political process anywhere. EASI found the delimitation process to be a problem (a score of 0.60 on this individual question), a result illustrating that the political hangover endured. The IEBC final report on the constituency and ward boundaries prompted numerous complaints about the process of creating them, and the divergences in their population size were often well outside the legally established norms. Though more than 125 formal challenges to the proposed boundaries and areas were presented, the courts ruled in favor of the IEBC and approved the changes. All of this left “a nagging feeling among a considerable section of politicians that the court decision undermined the constitutional standard” (ELOG 2013, 40-41).

As the March vote approached, voter registration problems curtailed participation. The period for voter registration was limited to a mere 30 days primarily because of delays in procuring the biometric voter registration (BVR) kits; the register was not officially complete until just ten days before Election Day. Ultimately, because of the shortened period and other

complications, just two-thirds of the eligible voters were registered, or a total of 14.3 million people from a pool of an estimated 18 million (Long, et al., 2013, 141; EU 2013b, 15).

According to one participant in the EASI survey, commenting on the voter registration list, “It [was] expected to be very clean and include names of those who applied to be included.

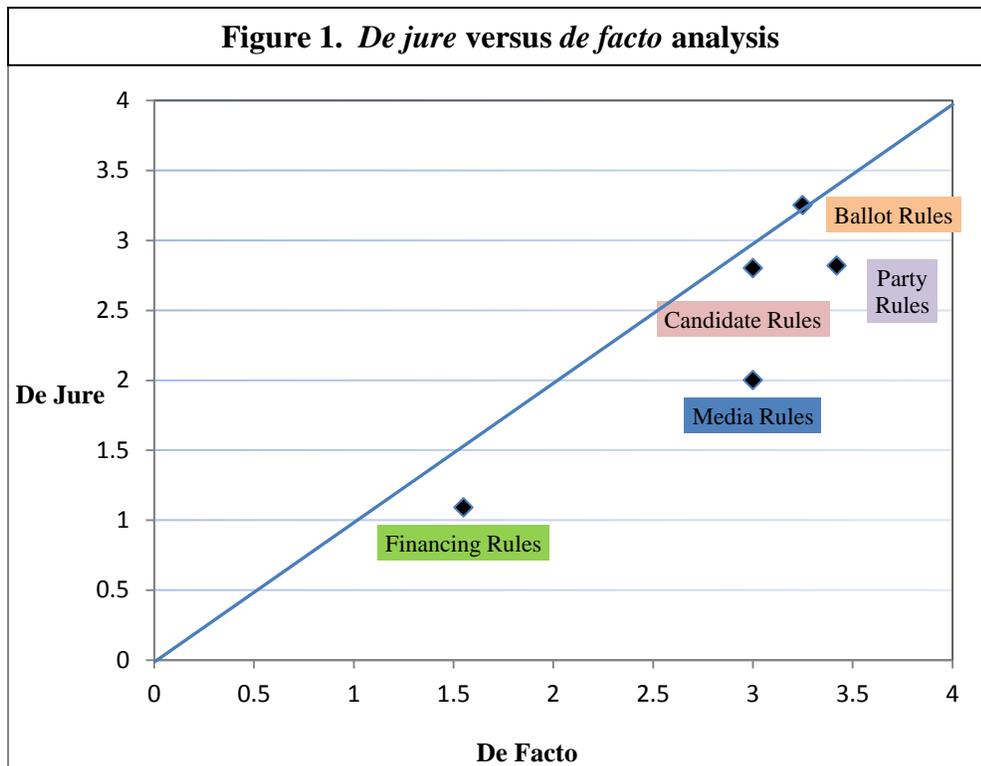
However, there were reported cases of missing names, and the number of youth was low due to lack of [a] National Identification Card which is a prerequisite for registration.”⁴ This barrier to registering youth was mentioned a few times by EASI respondents, and observers such as ELOG made this point not only for youth, but for the disabled as well (ELOG 2013, 48-50). Some respondents, moreover, saw what they felt was politicization of voter registration through control of identification cards and preferential treatment in the distribution of BVR kits.

According to another survey participant, “The register is always controversial. The biometric registration was perceived to have failed . . . repeat registrations are incredibly expensive and the process started way, way too late to enable satisfactory checking and testing.”⁵ This respondent was addressing one of the major, much discussed technological problems associated with the election. Kenya’s political leaders had insisted that the IEBC, the body charged with conducting the election, go fully high-tech and adopt not only the BVR, but also electronic voter identification devices (EVIDs) for polling stations on Election Day and electronic transmission of results system (ETRS), the latter of which was designed to allow relatively quick electronic transmission of provisional results for public display. Procuring and operationalizing these systems led in each case to delays and technical failures that undermined the elections.

⁴ Anonymous comment, respondent #11.

⁵ Anonymous comment, respondent #1.

The state of pre-electoral competition raises concerns that the playing field was not level. The EASI score for this indicator was the worst of the nine (0.599). Enforcement of campaign financing, media and to a lesser extent other rules were central to the problem. Campaign finance legislation was not enacted prior to the election and there proved to be little restriction on the use of money. The existing legal provisions on use of state resources are “always violated



with impunity” and “hardly enforced” according to EASI respondents, who generally reflected the views of others.⁶ The new law on political parties was not well enforced as

parties created “spurious lists of members”⁷ and candidate party-switching deadlines were ignored. With respect to candidate nominations, the Carter Center found “deception, with many cases of fraud, rigging, and outright bias being reported” (Carter Center 2013b, 33). The IEBC did, however, act expeditiously on complaints filed about the nomination process (Carter Center 2013b, EU 2013b).

⁶ Anonymous comment, respondents #11 and #13.

⁷ Anonymous comment, respondent #13

Figure 1 allows for the more explicit rule-of-law analysis of the quality of the election rules critical to the establishment of a high quality electoral contest. EASI asks respondents to rate both the quality of the key rules as written and the degree to which they are enforced. As seen in the scatter plot, as the points move to the upper right nearer to or along the diagonal, the rules can be considered both of better quality and better enforced. The ballot rules in Kenya, for example, are not only well designed but also well enforced, a nearly ideal situation in this case. The candidate and political party rules are about equally well enforced. The biggest problems occurred with media—though some respondents noted that coverage was more balanced than in the past—and especially financing regulations, which are poor or non-existent, and those that do exist are poorly respected.

Finally, in the preparation period prior to the election the integrity of the process faced challenges. The new Constitution provided for a strong IEBC, and a subsequent law established a good, accountable process for appointing the IEBC leadership and strong integrity requirements for all candidates. There was therefore little question about the IEBC's authority over the many aspects of the election, and as an institution was viewed as "professional and impartial" (EU 2013b, 11). The IEBC's budget and election administrative capacity for staging the elections was generally adequate—or weak in some areas, strong in others such as overall staff quality. The problems related to procurement and delivery of equipment for the installation of the new technologies were at issue, and the IEBC's collective decision making and timely planning capacity was questionable. Some poll worker bias cannot be ruled out, and poll worker training "was too little and too late" in the provision of passwords for the operation of cell phones, for example, that would transmit election results to tally, which largely failed.⁸

⁸ Anonymous comment, respondent #1.

Big Challenges at the Time of the Vote

The Kenyan electoral system performed relatively better on the day of the election than it had earlier in the cycle. The averages for each of the three dimensions are just about at or approaching the 0.8 level, as seen in Figure 2. Perhaps not surprisingly given what was at stake, turnout was high—reported by the IEBC at almost 86%—and voters patiently endured long lines to cast their ballots.

The new technology failed or, more accurately, the lack of preparedness for its use was exposed, raising serious concerns by the end of the day. Participation suffered somewhat because voter identification at the polls was not fully safeguarded. Specifically, the failure of the EVIDs in roughly half of the polling sites raised the prospect of potential double voting or voter impersonation. EVIDs had been too quickly deployed to operate smoothly, and polling station staff were not sufficiently trained to use them (EU 2013b, 29). Given the earlier problems with the BVR, there proved to be no consistently reliable means of checking registered citizens and clearly confirming who and how many had voted; four different lists were used (EU 2013b, 14-15; Carter Center 2013b, 46). Several EASI respondents pointed this out. “Failure of biometric ID systems forced [a] return to [the] paper registry,” one commented, “which created vulnerabilities.”⁹ The EASI score of 0.781 is a reflection of the concern among the respondents.

Competition during the vote, which received a 0.785 EASI score, was generally fair on Election Day. Political parties had representatives or agents in place at nearly all the polls, according to one observation team. ELOG, with its 7,000 observers nationwide, found the presence of party agents at the polls “impressive”; only 1.8% of the polling stations did not have them (ELOG 2013, 64). Party agents were formally able to challenge voter eligibility. In

⁹ Anonymous survey comment, respondent #4.

practice, however, they really did not have the time to examine the list of voters before Election Day or during the vote. Their presence, it should be noted, raised some concern among a few EASI respondents about the quality of participation as well (this question received a 0.72 score). They pointed out that ballot casting was not entirely secret because in some cases party agents and IEBC staff assisted voters with their voting.

Poll staff were well regarded overall, and supplies at voting places were usually sufficient. The high turnout led to hours-long delays in urban and other areas, however, which some had witnessed in previous elections and which therefore indicated that staff levels were at times inadequate. Security at the polls for workers and voters was also a concern given past violence and, in fact, election-day attacks in the Coast and North Eastern regions led to multiple deaths (EU 2013b, 29). The police were present at all polling sites, however, and overall the role of the police was either good or very good (ELOG 2013, 64; EU 2013b, 27).

The Post-Vote Period: Positives and Negatives Again

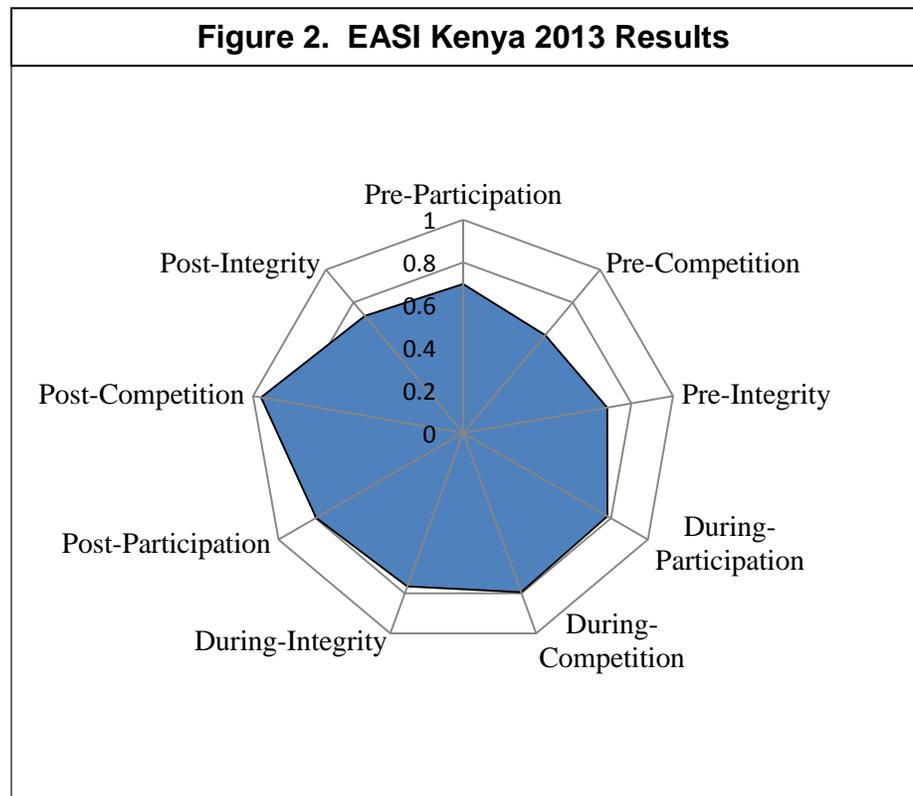
Once the voting was done, despite the looming controversy over the reporting of the results, the election proved positive in a number of areas. Competition in the period after the election was impressive (a high EASI score of 0.962). This result is again a reflection of the strong role of the nearly omnipresent monitors and party or candidate agents. The agents were allowed to observe the opening of ballot boxes, counting of ballots, reconciliation of supplied ballots and recording of results. There were reports, however, of agents being unable to conduct oversight of ballot counting because they were confined to a limited space and even expelled from some locations (Carter Center 2013b, 74; EU 2013b, 30-31). Yet in the end, though agents had legal standing to

request recounts at the polling place, few filed complaints and virtually all of them signed declarations verifying the use of proper counting procedures (Carter Center 2013b, 48).

In addition, the authority and timing for certification of the results and declaration of run-offs—the IEBC, backed by the High Court in this instance, given the CORD coalition’s official petition to nullify the election results—was for the most part considered absolutely clear. The structure in place for dealing with complaints was much stronger than in the past. The electoral and judicial reforms adopted under the Grand Coalition government significantly improved the staff and leadership of the two institutions, according both much greater public credibility and confidence that decision making was not politically biased as in the past. As ELOG explained in its report, “Kenya for the first time in its history of elections witnessed the rare occasion where a presidential petition was presented in its entirety, issue by issue, in the full glare of national and international media,” ultimately affirming the Kenyatta victory (2013, 66). The improvement in

the operation of these and other institutions related to the election is one of Kenya’s clear successes.

In the days before the two institutions were tested, during the post-vote period, the technology



problem reared its head again. The EASI score for this period, which encompasses the integrity of processes such as secure transport of voting materials, monitoring of vote tallies, posting of results and audits, is the lowest of the six vote-casting and post-vote scores (0.717). The ETRS was designed to allow quick, electronic transmission of provisional results within 48 hours of the polls closing. The prospect of displaying the provisional results on television and online raised public expectations about knowing the winning candidates on election night. Those hopes were soon dashed, however, and suddenly replaced with the new prospect of political polarization when nearly midway through the transmission process the posting of the results came to a halt. Server and other technical problems had shut the system down by the day after the election. The IEBC subsequently turned all of its attention to tallying the official results at all levels, which was already underway, and progressively announcing the votes cast for each presidential candidate (EU 2013b, 32; Carter Center 2013b, 53). The IEBC was legally allowed a week to complete the process. Given the expectations raised, however, and the false public impression that the tallying was beginning anew, IEBC officials soon found themselves under considerable pressure to report the results as quickly as possible. At this point two more serious issues—a programming error that showed the number of rejected ballots to be eight times what it actually was and uncertainty over the calculation of the presidential vote created by a lack of clarity in how to define “votes cast”—also emerged. So as the results were still coming in, as the EU reported, “a fundamental element of the electoral framework was undermined and vulnerable to political controversy” (EU 2013b, 32). Both issues were addressed publicly as the paper-based official results were tallied. The IEBC announced the presidential results five days after the polls closed: Kenyatta was declared the winner in the first round with that razor-thin margin (EU 2013b, 30-32; Carter Center 2013b, 52-53).

To EASI respondents, therefore, the posting of results was not timely. As some pointed out, moreover, though the winners of the non-presidential contests had been announced soon after the election, months later the IEBC had still not released the vote tallies for those races.¹⁰ With respect to complaints and appeals, the presidential petitions were dealt with quickly by the High Court in accordance with the law but many other cases have been pending for months. In addition, Kenya's electoral management bodies—presently the IEBC—have a weak tradition of doing effective post-election internal audits and reviews. EASI respondents generally did not expect much from any pending audit following the 2013 vote. A few were dismissive because it would lack independence, one comparing such reviews to “an in-house navel-gazing exercise that does not invite robust external dialogue and exchange.”¹¹

One more point drawn from the Kenya EASI survey requires emphasis. As in any country, regional or local variation in election administration can make some parts of Kenya more vulnerable to problems than others. Differences between highly populated urban areas and sparsely populated rural areas, for example, may well create divergences in election quality. Geographic inconsistency indeed proved to be a concern in Kenya, where variation was seen as a significant or greater by half of the respondents. This question also showed a low score of 0.60 on this individual question (it was not part of the matrix scoring).

Conclusion and Implications

¹⁰ A June 12, 2013 presentation given by Ahmed Hassan, the IEBC chair, at IFES in Washington, D.C., acknowledged this problem and explained that the IEBC had the results for all elected positions, but that some discrepancies prevented their release for the moment.

¹¹ Anonymous comment, respondent #1.

Measuring the quality of the historic March 2013 Kenya elections through utilization of the EASI methodology, which is based on the views of 13 Kenya election experts and draws on the insights provided by election observation missions, scholarly articles, the media and other sources of information, has provided a valuable set of evaluative scores and allowed for further analysis of the vote. EASI tells us quantitatively what the election observer reports provide in a qualitative fashion; together they allow for deeper understanding of the electoral process. The results can further inform future reform efforts. They will also allow for comparisons with future Kenyan elections and with other countries in East Africa.

The preparatory pre-election period witnessed weaknesses—the greatest weaknesses—across all three EASI dimensions of election administration: participation, competition and integrity of the process. Scores ranged between 60 and 70% of “peak” or ideal performance. Delays in establishing a new voter register left a large proportion of Kenyans unregistered. There appeared to be little control over party candidate lists, and weak enforcement of the campaign financing and media rules raised questions about fairness. Election Day voting was hardly perfect—the system functioned just below the 80% level. Generally the problems were addressed or certainly did not rise to potential crisis proportions. Electronic voter identification did not function in at least half of the polling stations, for example, but alternatives lists were found. Post-vote competition was quite good, extraordinarily close to peak performance at 96%. The integrity of the process after the vote, however—notably the technological malfunction of the provisional results reporting that received so much attention—was compromised. The 72% performance on that dimension reflects the suspicion and concern raised by the failure to meet raised expectations. One also finds that election quality is uneven across the country. The lack

of consistent quality calls for further investigation and efforts to identify issues and bolster the system in locations where the weaknesses lie.

What have we learned through EASI about the outcome of the election? In the absence of any substantial evidence of fraud and as reflected in public confidence in the key institutions involved, the March 2013 general elections represent a serious, good faith effort to conduct a credible vote. Ultimately Kenyans seemed tacitly to recognize this point: given the circumstances, the elections were good enough. Overall, considering the dire situation following the elections five year earlier, the outcome for the development of Kenya's democratic system was positive.

An additional point made often but not captured by EASI is the division of power (or promise thereof) that resulted from the multiplicity of national and subnational political offices up for election. Assuming gradual compliance with the terms of the 2010 Constitution, the rigid zero sum politics of the past will be relegated to Kenyan history. The societal demand for peace, the establishment of capable professional institutions and promise of alternative access to political power prevailed, even if problems with the election administration discussed above left them far from perfect (diverse voter registration lists; party-switching, failure to release non-presidential race vote totals, etc.). When one considers these problems' potential impact on the final tally—recognizing that Kenyatta barely won in the first round—the argument that there at least should have been a second round is easily defensible. All things considered, however, the related argument that the declaration of a first round victory in the interests of peace came at the expense of Kenyan democracy is not terribly convincing.¹²

EASI's application in Kenya demonstrates that the tool can identify strengths and weaknesses in election administration. It also helps distinguish their relative importance. EASI

¹² Long, et al. (2013, 153-154) essentially make this argument, for example.

can thus help election officials learn from the experience of the March vote and identify potential reforms that can improve Kenya's election administration for the next cycle. EASI also proves to be a finely tuned measurement tool. Small movement in a score can reflect significant change in an electoral dimension, and it does appear to capture nuances that mark the quality of election administration. Though it serves as a good measuring stick—which is notoriously difficult to do and sustain in the developing world—its greatest value may lie in the future when repeated applications for subsequent elections can provide a longitudinal view of the progress (or regress) of election administration in Kenya or anywhere else. Further, when applied for elections in other parts of East Africa it could also prove to be valuable measure of election administration development across similar countries.

As for learning from Kenya's 2013 experience, a range of election experts and political actors have provided a wealth of electoral reform recommendations based on years of careful observation. The IEBC, moreover, is planning a series of stakeholder consultations aimed at identifying priority improvements in a collaborative fashion, and the IEBC chair, Ahmed Hassan, has presented some ideas publicly as well.¹³ Voter registration, for one, is a concern for all those who closely monitored the Kenyan electoral cycle. The timely, transparent publication of a single, accurate list of voters well in advance of the election, which would allow for independent organizations to verify accuracy, is essential (ELOG 2013, 75). The provision of the means for all eligible citizens to register and vote, including the disabled and marginalized communities, should be another priority initiative (EU 2013b, 41). Hassan has called for an integrated, more efficient system in which documentation required for registering and voting are consolidated.

¹³ Hassan presentation, Washington, D.C., June 12, 2013.

Many agree, Hassan included, that Kenyan lawmakers were engaged in amending electoral laws far too late into the electoral process. During the last three months, the IEBC must be focused on ensuring a valid election as opposed to adjusting their activities to respond to amendments meant to favor one party or the other. Other issues of timing that increased pressure on the IEBC are the party-switching created by late candidate nomination primaries, the convening of all six elections in one day and lack of a clearly established campaign period (Carter Center 2013b, 74).

If the “tyranny of numbers,” a reference to divisive politics in which the larger ethnic groups maintain primacy because they can always count on the votes of their ethnic group, has long plagued Kenya, the tyranny of technology was the bane of 2013. Despite being advised against it and ignoring warning signs as deadlines were being missed, Kenya’s political leaders and the IEBC took on too much technology on too short a notice, and the consequences that resulted from its failure were strongly felt. If the same systems are to be adopted for future elections, detailed planning, training and testing must be done early and well. To paraphrase Hassan with respect to the IEBC effort to adopt three new technologies all at once, ‘Don’t test the depth of the water by jumping in with two feet.’¹⁴ This is indeed an exercise in institutional strengthening, and it takes time to successfully make progress (Barkan 2013, 163).

Finally, party agents and observer missions must be provided with open access to the tally centers at all levels. Their oversight of the ballot counting was too often limited. These and other improvements in the process will help ensure that future Kenya elections are carried out not only in a peaceful manner, but also with the routine effectiveness and consistently universal acceptance of a consolidating democracy.

¹⁴ Ahmed Hassan, presentation at IFES, Washington, D.C., June 12, 2013.

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