

EXECUTIVE SUMMARY

On 30 December 2007, following announcement of the presidential election results, violence broke out in several places across Kenya amid claims that the Electoral Commission of Kenya (ECK) had rigged the presidential election. Sporadic eruptions continued for many weeks, bringing death and destruction to thousands of Kenyans. An African Union-sponsored Panel of Eminent African Personalities led by former United Nations Secretary General Kofi Annan brokered a settlement which heralded a government of national unity between the main political parties and a common commitment to urgent constitutional reform. The settlement included the appointment of two commissions, one to examine the violence and the other, the Independent Review Commission (IREC), to examine the December 2007 Kenyan elections from various perspectives.

In conformity with its terms of reference (ToRs) IREC now presents its findings and recommendations, based on its analysis of the legal framework for the conduct of elections in Kenya, the structure, composition and management system of the ECK and its organisation and conduct of the 2007 electoral operations. The report specifically examines the integrity of the whole electoral process, from voter registration and nomination of candidates through voting, counting, transmission and tallying to dispute resolution and post-election procedures, deals with the role of political parties, observers, the media, civil society and the public at large, and comments on the independence, capacity and functional efficiency of the ECK.

Main findings

Kenya's constitutional and legal framework relating to elections contains a number of weaknesses and inconsistencies that weaken its effectiveness. This legislation needs urgent and radical revision, including consolidation.

The electoral management process as a whole needs revision

During the preparation and conduct of the 2007 elections the ECK lacked the necessary independence, capacity and functionality because of weaknesses in its organisational structure, composition, and management systems.

The institutional legitimacy of the ECK and public confidence in the professional credibility of its commissioners and staff have been gravely and arguably irreversibly impaired. It lacks functional efficiency and is incapable of properly discharging its mandate.

The conduct of the electoral process was hampered and the electoral environment was polluted by the conduct of many public participants, especially political parties and the media.

There were serious defects in the voter register which impaired the integrity of the 2007 elections even before polling started:

- it excluded nearly one-third of eligible voters, with a bias against women and young people
- it included the names of some 1.2 million dead people

Serious anomalies in the delimitation of constituencies impaired the legitimacy of the electoral process even before polling started.

There was generalised abuse of polling, characterised by widespread bribery, vote-buying, intimidation and ballot-stuffing.

This was followed by grossly defective data collation, transmission and tallying, and ultimately the electoral process failed for lack of adequate planning, staff-selection/training, public relations and dispute resolution.

The integrity of the process and the credibility of the results were so gravely impaired by these manifold irregularities and defects that it is irrelevant whether or not there was actual rigging at the national tally centre. The results are irretrievably polluted.

Main recommendations

All political role-players in Kenya should recognise that materially defective elections accompanied by public violence will remain a feature of life in their country absent a concerted and sustained commitment to electoral integrity by all Kenyans.

Radically reform the ECK, or create a new electoral management body (EMB), with a new name, image and ethos, committed to administrative excellence in the service of electoral integrity, composed of a lean policy-making and supervisory board, selected in a transparent and inclusive process, interacting with a properly structured professional secretariat.

Devise, implement and maintain appropriate executive, legislative and political measures to enable the reconstituted or new EMB to initiate, popularise and sustain a national commitment to electoral integrity and respect for the inalienable franchise rights of Kenyan citizens.

Empower the EMB, by means of executive, legislative and political measures properly to perform the essential functions entrusted to it under sections 42 and 42A of the Constitution (delimitation and the conduct of elections and associated activities).

Adopt a new voter registration system.

Agree (as part of the constitutional review process) on an electoral system, which puts to rest the continuous discussion about a new electoral system for Kenya.

Choose and implement the necessary constitutional and other legal amendments to give effect to whichever of IREC's recommendations are accepted.

Minority Opinion

Two members of the Commission held a dissenting view on some of the findings reported in Chapter 6. Their opinions are presented in italics at the end of each of the relevant paragraphs.