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**CONTACT: In Atlanta, Deborah Hakes 1 404-420-5124; In Nairobi, Stéphane Mondon
+254 738 245 781**

**Carter Center Congratulates Kenyan Voters on Peaceful Election, Urges Patience While
Results Processed**

The Carter Center finds that Kenya's polls were well-conducted in a peaceful environment. Voter turnout appears to have been high. The Independent Electoral and Boundaries Commission has made important commitments to improve the transparency of the counting and tabulation of votes. Although partial provisional results are available, the full tabulation of results is ongoing.

The Center regrets the security incident at the coast on the eve of election day, which led to the unfortunate loss of lives including the death of an Independent Electoral and Boundaries Commission agent during the course of his duties. Their extreme sacrifice is a constant reminder of the importance of peace and security in the conduct of democratic elections.

The Center has observed a high number of rejected votes, and appeals to the Independent Electoral and Boundaries Commission and other stakeholders to address this in the short term.

At this stage, with the tabulation of final results still underway, it is too early to provide an overall assessment of the electoral process. Carter Center observers will continue to observe the tabulation process, dispute resolution, and the post-election environment.

In the meantime, political parties and their leaders should refrain from releasing one sided figures or making inflammatory statements. Instead we advise them to cooperate with the Independent Electoral and Boundaries Commission and appeal to their supporters to remain calm, refraining from any action that may lead to compromising security of the elections in general and the Kenyan people in particular.

The Center encourages political parties and candidates to continue to exercise patience as the results process continues and to bring any complaints they may have to the appropriate legal channels.

The Center launched its election observation mission in Kenya in January 2013 with the deployment of 14 long-term observers from 11 countries. They were joined by an additional 38

short-term observers from 19 countries to observe voting and counting. The mission was led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau. On election day, Carter Center observers visited 265 polling stations in 34 counties.

The Carter Center is in Kenya at the invitation of the Independent Electoral and Boundaries Commission and will provide an impartial and independent assessment of the electoral process to be made available to Kenyan citizens and the international community through periodic public statements. The Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the Independent Electoral and Boundaries Commission Code of Conduct for Election Observers.¹ The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.

This statement is preliminary; a final report will be published in the coming months following the conclusion of the electoral process. The full preliminary statement is attached.

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A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in more than 70 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; improving mental health care; and teaching farmers in developing nations to increase crop production. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University, to advance peace and health worldwide.



The Carter Center International Election Observation Mission to Kenya's March 4, 2013, Elections

Statement of Preliminary Findings and Conclusions

On March 4, 2013, Kenya held its fifth elections since the re-establishment of multi-party politics in 1991. The country has a longstanding history of ethnic fuelled electoral violence, which culminated in post-election violence in 2007 and 2008, leaving more than 1,000 dead and over 600,000 internally displaced people. The March 4 elections were the first conducted under the terms of the new constitution adopted by referendum in 2010, with a new electoral management body, the Independent Electoral and Boundaries Commission (IEBC).

The Carter Center launched its election observation mission in Kenya in January 2013 with the deployment of 14 long-term observers from 11 countries. They were joined by 38 short-term observers from 19 countries to observe voting and counting. The mission was led by former Zambia President Rupiah Banda and Carter Center Vice President for Peace Programs Dr. John Stremlau. On election day, the Center's observers visited 265 polling stations in 34 counties. Carter Center observers will continue to observe the tabulation process, dispute resolution, and the post-election environment.

The following observations are preliminary and may be amended as The Carter Center continues its assessment. Any commentary or recommendations offered in the spirit of support for genuine democratic elections in Kenya.

Legal and Electoral Framework

A sound legal electoral framework is essential for the effective administration of democratic elections that adhere to national and international rights. The legal framework includes the rules found in the national laws of the country that regulate how all aspects of the electoral process will unfold, including electoral management, boundary delimitation, campaigning, voter education and registration, voting operations, and counting and dispute resolution.

The Republic of Kenya has committed itself to a number of regional and international treaties through which it has obliged itself to follow key human rights standards.¹ Kenya has ratified a series of international and regional human and political rights instruments that are relevant to the electoral process. These treaties include the Convention of the Political Right of Women, (CPRW), the International Convention on the Elimination of Racial Discrimination (CERD), the International Covenant on Civil and Political Rights, (ICCPR), the Convention of the

¹ Art. 2 (6) of the Constitution of Kenya states that: "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."

Elimination of all Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR), the African Union Charter on the Principles Governing Democratic Elections in Africa (AU CPGDEA), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ACHPR-PW), and the Convention on the Rights of Persons with Disabilities.

The Elections Act, the Independent Electoral and Boundaries Commission Act, and the Political Parties Act provide solid grounds for genuine elections. In addition, with two codes of conduct, the legal framework provides for a solid framework for a peaceful campaign. Effective access to the legal framework is made difficult by the variety of acts and the profusion of subsidiary legislation, published in the Kenya gazette without further dissemination. The legal framework could be made more accessible to stakeholders and especially voters by a compilation of its regulations.

In contrast with 2007 elections, the current legal framework provides for a credible dispute resolution mechanism thanks to the reform of the judiciary, described in more detail below.

The Carter Center regrets the decision not to apply the two-thirds gender quota, which represent a step back from the constitutional commitment of Kenya to ensure equal eligibility and participate in formulation of government policy as stated in the Convention on the Elimination of all Forms of Discrimination against Women.²

The Center also notes that the absence of campaign finance regulations reduces transparency in campaign spending and gives an unfair advantage to the wealthiest candidates.

Good practices in achieving elections that meet international standards advise that no substantial change to the electoral law should be made within six months prior to elections. Unfortunately, several amendments were made in this period, one of them withdrawing the obligation of party membership three months prior to party nomination. This allowed candidates to switch parties at the last minute, opening the possibility of "party hopping" for losing aspirants and thus withdrawing an essential safeguard against fraud, manipulation, and antedating of nomination documents.

The Center regrets the disenfranchisement of prisoners, whom in spite of a court recommendation to include them in the voter register, were not permitted to participate in the process.

Election Administration

An independent and impartial electoral authority that functions transparently and professionally is internationally recognized as an effective means of ensuring that citizens are able to participate in a genuine democratic election and that other international obligations related to the electoral process can be met.³

² Ratified by the Republic of Kenya on March 9, 1984.

³ UNHRC General Comment No.25, para. 20

The constitution provides for the establishment of the IEBC under Article 88. After the enactment of the new constitution in 2010, one of the critical pieces of legislation enacted by the parliament was the Independent Electoral and Boundaries Commission Act, which provided the process for the recruitment and selection of the commissioners to the IEBC.⁴

The Carter Center welcomes the introduction of new selection criteria for the recruitment of the IEBC. The recruitment of IEBC commissioners was handled through multiple independent institutions, which was a departure from the selection of commissioners in the previous general elections. The process was spearheaded by the IEBC selection panel, which received all applications for the positions of IEBC commissioner. The president and prime minister then forwarded names to parliament for approval. In spite of attempts at political interference at various points in the process, the process enjoyed a high degree of impartiality, which has enhanced the credibility of the IEBC with both political parties and the general public.

The constitutional responsibilities of the IEBC include the continuous registration of voters and revision of the voter's roll, the delimitation of constituencies and wards, the regulation of political parties process, the settlement of electoral disputes, the registration of candidates for elections, voter education, the facilitation of the observation, monitoring and evaluation of elections, the regulation of money spent by a candidate or party in respect of any election, the development of a code of conduct for candidates and parties, and the monitoring of compliance with legislation on nomination of candidates by parties.

The Center is concerned about the low voter registration in pastoralist areas of Kenya and appeals to the IEBC to devise better methodology of reaching nomadic communities in future.

Candidates, Parties, and the Campaign Environment

The right of individuals to participate in public affairs, including through the establishment of and free association with political parties and participation in campaign activities, is protected by international principles and fundamental electoral rights.⁵ Equal treatment of candidates and parties during an election, as well as the maintenance of an open and transparent campaign environment, are important to protecting the integrity of the democratic election process.⁶ The Constitution of Kenya also guarantees freedom of citizens to exercise their political rights under Article 38 and guarantees free and fair elections free from violence, intimidation, improper influence or corruption, and conducted by an independent body. Chapter VII of the Constitution of Kenya guarantees the representation of the people and covers critical areas of general principles for the electoral system, legislation on elections, registration as a voter, candidates for election and political parties to comply with code of conduct, and electoral disputes, amongst other issues.

The campaign ended on March 2 at midnight on a peaceful note. The last campaign rallies gathered numerous supporters and no clashes were observed. Kenyans were able to assemble freely while parties and candidates conveyed their message to potential voters. The Center's

⁴ Internal Electoral and Boundaries Commission Act, art. 5

⁵ *ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7 (b); UNHRC, General Comments 25, para. 2*

⁶ *AU-ACHPR, art.10 (1); IPU, Declaration on Criteria for Free and Fair Elections art.3 (3);*

observers reported isolated cases of vandalism such as destruction of campaign posters. The Carter Center welcomed the organization of a public rally at Uhuru Park on Feb. 25 where all presidential candidates pledged to peaceful elections. The event gathered a big crowd of supporters and showed a strong moral commitment to a peaceful electoral process.

Campaign finance is provided to national political parties by public funding in proportion to the strength of their representation in parliament or votes garnered in previous elections. Unfortunately, the absence of a fully defined official campaign period tends to penalize candidates and parties who lack the resources to run a long and expensive campaign. Financial resources continued to prevent a level playing field through the end of the campaign. While the wealthiest candidates were campaigning using helicopters, others struggled to afford billboards, media space, and televised advertising.

Several Kenyan organizations have reported on the particular disadvantages facing women candidates, who frequently lack the resources of male contenders and who often do not receive help from their parties.

Occurrences of hate speech were reported on vernacular radio; however, the Center commends the majority of Kenyan citizens for their commitment to a peaceful electoral process reaffirmed on numerous occasions during the campaign. The Carter Center welcomed the organization of two presidential and vice presidential debates where all eight candidates exchanged their views on live television and 33 radio stations across the country.

Participation of Women

State obligations to promote de facto equality for women derive, in part, from broader political obligations regarding absence of discrimination and the right of all citizens to participate in the public affairs of their country regardless of gender.⁷ Through ratification of international and regional treaties, Kenya has pledged to promote the political participation of women on an equal basis with men. It has also made specific provision for the rights of women in the 2010 constitution.⁸

In spite of a legal framework providing for a solid set of rules to enhance women participation in politics, The Carter Center observed a very low number of women competing for elective positions. While the Center welcomes the adoption of a quota system that ensures an immediate representation of women in parliament, rather than empowering women to fully engage in the political process as candidates and elected representatives, the reserved seats for women have served to segregate female candidates and to bar them from standing as candidates for any other seat in parliament.

Just one of the eight aspirants for the presidency is a woman. Only 167 women ran among several thousand candidates for the 290 elected seats in parliament. Seven women are in the race for the 47 governor seats and 17 are running for the one of the 47 senate seats. The majority of

⁷ UN, Convention on the Elimination of all forms of Discrimination against Women, art. 3

⁸ Constitution of Kenya 2010, Art. 59 (2) (b)

women candidates competed for the reserved seats in the National Assembly with 403 candidates vying for the 47 seats.

In spite of numerous dispositions aimed at ensuring a better representation of women in public office, The Carter Center regrets the undermining of the essential component of a modern society that is the promotion of women's representation in elective positions. The Political Parties Act alone contains three significant articles focusing on gender equality in both party and government composition, however, their existence has failed to translate to higher political representation or participation by female candidates.⁹

Media

International obligations related to the media and elections include freedom of expression; opinion; and the right to seek, receive, and impart information through a range of media.¹⁰ While The Carter Center did not conduct comprehensive media monitoring, it offers the following observations on the overall media framework.

The Carter Center observed very intense media coverage of the electoral campaign, mainly concentrated around the two parties that were considered frontrunners by pollsters. The attention given to the two main presidential contenders, CORD and Jubilee, and their financial capacity to occupy the media did not create a level playing field for the other candidates.

The numerous public opinion polls reported during the campaign prepared the Kenyan people for a potential runoff and a very close race, inciting the media to focus even more on the two main presidential candidates. Throughout the campaign, the national media focused on the presidential elections, leaving aside the crucial competition for national and local assemblies, which will play a major role in the country's future with the implementation of the new devolution system. The Center finds that more attention should have been given to the five other elections that took place on March 4.

The Carter Center regrets the focus given by international media on the risks of violence that did not reflect the peace oriented messages sent by candidates, political parties, and all stakeholders.

Voting Procedures

The quality of voting operations on election day is crucial to determining how closely an election falls in line with a country's democratic obligations.¹¹ A core obligation under international law is that elections shall be held by secret ballot, which is recognized as a means of ensuring that the will of the people is expressed freely, and that a cast ballot cannot be connected with a voter to avoid intimidation and political retribution. Kenya appears to have largely met this important obligation in the March 4 elections.

⁹ art 7.2.c, art 25.2(b), art.91 (f), art.100 of the Political Parties Act

¹⁰ UN, ICCPR, art. 19(2); United Nations Convention against Corruption, arts. 10(a) and 13(b); AU, Principles on Freedom of Expression in Africa, art. 6

¹¹ UN, ICCPR, art. 25; ACHR, art. 23; UN UDHR, art. 21

Carter Center observers visited a total of 265 polling stations on election day, where they observed the opening of the polls and the polling, closing, and counting procedures. Overall, Carter Center observers reported strong voter turnout and that the process was well conducted by IEBC officials. Polling station staff generally performed according to procedures with a rating of good or very good in more than 90 percent of stations visited.

Polling operations throughout the day, including counting, were performed in a largely peaceful atmosphere. Two serious incidents of violence with multiple deaths seriously marred election day in the coast region and forced the relocation of a constituency tally center.

For the 2013 elections, there were approximately 32,400 polling stations with a significant variance in the number of voters per polling station. Some 50 percent of polling stations had more than 400 voters and many large polling centers were established, often as a single polling station with many “streams.” It appears that the high number of voters at some polling locations is attributable to the delayed voter registration period while the electoral law also required the IEBC to gazette the number of polling stations 90 days before the elections (and before the voter register was finalized). One consequence was that while the IEBC sought to limit most polling stations to fewer than 1,000 voters, many locations felt the pressure of several thousand people trying to enter through a single gate or other control. The result was incredibly long queues. Kenyans withstood these long lines from early morning through the heat of the day and many voters waited six or more hours to vote. While Kenyans did so with great patience, the imposition of this waiting time is unreasonable and the IEBC should take steps to reduce this and establish more voting locations, improved queue management with more polling staff, or other measures. In future elections, the IEBC should consider reducing the number of registered voters per polling station to facilitate polling operations and counting.

The official hours of voting were 6a.m. -5p.m. Polls that opened late were to remain open for 11 hours, and all polling stations were to allow the last voter in line at the time of closing to cast their ballot. Carter Center observers reported that 75 percent of polling station openings occurred by 6:30 a.m. Nearly all polling station areas were free from campaign materials and the appropriate number of security personnel was on hand and behaved accordingly.

The March 4 elections were the first to use the electronic voter register, requiring each polling station to have a functioning electronic voter identification (EVID) machine to conduct biometric voter identification. However, Carter Center observers found that while polling workers were adequately trained on how to use the machines, many EVIDs malfunctioned or were not provided with an adequate power supply to maintain function for all 11 hours of voting. In 41 percent of polling stations visited by Center observers these electronic devices were not operating. This failure resulted in some confusion regarding the voters list which was further compounded by some 35,000 voters being included in the paper registry but not in the biometric system.

Polling stations also were issued with printed voter lists including photographs. Fortunately, polling station staff quickly reverted to the paper register to keep the voting process moving. While the technical difficulties and voters list confusion significantly slowed the voting process in certain areas, voting was able to continue and voters were not reported to be disenfranchised.

The IEBC is commended for its efforts to acquire, produce, and distribute both sensitive and nonsensitive election materials. Carter Center observers found that 95 percent of polling stations visited had all necessary materials by the time polling stations were to open at 6 a.m.

Carter Center observers noted that in some 20 percent of locations visited, the layout of the polling station and placement of the voting booth, particularly those in stations with limited space, could have compromised the secrecy of the vote. However, in these cases Carter Center observers did not report serious concerns about violations of ballot secrecy or incidents of intimidation or concern among voters.

According to public international law, all persons have the right to participate in the public affairs of their country.¹² This includes the right of citizens to participate in non-governmental organizations as well as the right of citizens to participate in citizen observer organizations and contribute to voter education efforts. Through these means, civil society can actively play an essential role in upholding an electoral process that is accountable and in which all participants can have confidence.

Political parties and independent candidates' agents from more than one party were present at almost all of the polling stations observed. Very few polling station complaints were recorded officially. Domestic observers were also prevalent at 60 percent of polling stations. The Center also notes the impressive work of the Elections Observation Group, which released two rolling assessments on election day and implemented a parallel voting tabulation as an independent check on the counting process.

Counting

The accurate and fair counting of votes plays an indispensable role in ensuring the electoral process is democratic and reflects the will of the voters. International and regional commitments indicate that votes be counted by an independent and impartial electoral management body whose counting process is public, transparent, and free of corruption.¹³

In the polling stations visited by Carter Center observers, closing and counting took place in a peaceful atmosphere and largely according to procedure. A significant number of counting operations did not reconcile the number of ballot papers properly, but otherwise most stations completed the appropriate results correctly. Party agents and/or observers signed the results declaration forms in nearly 100 percent of cases. In nearly a quarter of counts observed the results form was not posted, missing an important safeguard on the transparency of the counting process.

The Center has observed a high number of rejected votes and appeals to the IEBC and other stakeholders to address this in the short term. In the meantime, political parties and their leaders should refrain from releasing one sided figures or making inflammatory statements. Instead we advise them to cooperate with the IEBC and appeal to their supporters to remain calm, refraining

¹² UN, ICCPR, art. 25; AU, AfCHPR, art.13

¹³ African Charter, art. 17(1); UNHRC General Comment 25, para. 20; UN Convention against Corruption, art. 1819

from any action that may lead to compromising security of the elections in general and the Kenyan people in particular.

Tabulation

To promote transparency and reduce corruption, the IEBC has followed international best practice by providing party agents with signed copies of the polling station results. Polling station tallies were posted at the completion of the count and presiding officers were to transmit the presidential results directly to the national tally center via an electronic results system designed for use via mobile handset. In theory, every polling station result for the presidential election would have been transmitted to the national tally center once counting was completed on election night. Media and the public also have direct access to this feed, an impressive commitment to transparency and providing an important means to get provisional results into the public domain quickly. Unfortunately this has not been the case and while a significant number of results (representing some 40 percent) were posted within 24 hours of the close of polls, the majority were not.

The legal official results are on paper tally sheets from each polling station and these are to be transported securely to the 290 constituency tally centers, where once again they are to be available for scrutiny of party agents and observers and publicly posted. At the time of this statement, Carter Center observers report that this process has largely occurred without problem. Once completed at the constituency level, presidential tallies are to be delivered directly to the national tally center for final compilation by the IEBC.

Meanwhile, the remainder of the tabulation process will continue for the other elections and move up the chain to the 47 county tally centers. The Center hopes that political parties and observers will continue to follow the tabulation process to its conclusion to ensure that clear, detailed results by polling station are recorded and confirmed. Carter Center long-term observers will remain deployed to the completion of the results process.

The detailed, written procedures and guidelines for the organization and processing of polling station results have not been made available by the IEBC to the Center. General procedures were published but while the tally process appears to have been well-conducted thus far, written procedures are essential in the event of any election disputes that may arise. In future elections, the IEBC should strive to release procedures earlier.

The Center encourages political parties and candidates to continue to exercise patience as the results process continues and to bring any complaints they may have to the appropriate legal channels.

The Judiciary

Impunity within the justice system undermined the rule of law and underscored the need for urgent corrective measures to prevent a crisis similar to what Kenya experienced in the last elections. In 2011, the Vetting of Judges and Magistrates Act was passed by parliament, establishing the Judges and Magistrates Vetting Board to vet the suitability of all judges and magistrates who were in office on the effective date of the new constitution. The work of the

board has resulted in a clean-up of the judiciary with judges whose qualifications and integrity were questioned being dismissed from service.

In addition to the vetting process, the new constitution provided for a deep reform of the judiciary system as a whole. The Supreme Court has the highest jurisdiction in the country, followed by the Court of Appeal, High Courts, Magistrate's Courts, and other Subordinate Courts. The appointment and dismissal of judges and magistrates, vested by an independent Judicial Service Commission, was an essential step to renew the trust of Kenyan citizens in their judicial system. The renewed judiciary and legal framework provides a credible dispute resolution mechanism that renders unjustifiable the use of violence as a tool to contest election results.

The efficient distribution of cases between magistrate's courts for county representatives, high courts for parliamentary, senatorial, governorship, and women representative contestants, and the Supreme Court for the presidential elections will be instrumental to a swift resolution of disputes. However, with only 70 high court judges in place and a period of six months to determine election disputes, along with the priority put on electoral cases, there is a strong likelihood that the courts will be forced to prioritize electoral disputes over their normal work, potentially impeding access to justice for Kenyans. In a highly charged political atmosphere for elections to entirely new offices, Kenyans will have to be patient just as the judiciary must ensure that full access to redress is enabled.

Electoral Dispute Resolution

Efficient electoral dispute mechanisms, including, as necessary, the provision of a fair and public hearing before a tribunal, are essential to ensure that effective remedies are available for the redress of violations of fundamental rights related to the electoral process.¹⁴ The Carter Center welcomes the fast tracking of all elections related matters by the judiciary and the establishment of the Judiciary Working Committee on Election Preparations by the chief justice to develop strategies to efficiently and effectively manage elections disputes. The Center also commends the special training received by all judges, magistrates, and court registrars to handle elections offences and disputes. The judiciary's adoption of the Election Petitions Rules and Supreme Court Rules on Presidential Election Petitions enhances the transparency and credibility of the institution while providing stakeholders with clear rules for the settlement of disputes. The Carter Center also commends the judiciary for having published the rules governing electoral petitions in the newspapers, making them clear and accessible to all stakeholders.

In the period building up to the elections, the judiciary addressed multiple cases directly affecting the electoral process. These included all the matters arising from the delimitation of electoral units at the constituency and ward levels and questions on the election date. A number of cases relating to the procurement process of the IEBC and one against international observers also were filed and concluded before the elections.

Of significance to note is the case on procurement of ballot papers filed and concluded a few days before the elections. This case presented a tense period for the voters as its determination had significant impact on the IEBC meeting critical operational deadlines. A recent decision of

¹⁴ ICCPR, Art. 2(3), UNHRC, General Comment No. 32, para. 18

the court was given in regards to the integrity of a presidential candidate and his running mate on Feb. 15, 2013. The efficiency with which the courts have dealt with matters coming before it has increased the credibility of the judiciary's ability to settle electoral disputes with impartiality.

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The Carter Center makes its assessment based on Kenya's legal framework and its obligations for democratic elections contained in regional and international treaties. The Center's observation mission is conducted in accordance with the Declaration of Principles for International Election Observation and all its observers have signed the IEBC Code of Conduct for Election Observers.¹⁵ The Carter Center has observed 94 elections in 37 countries, including the 2002 elections in Kenya.

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¹⁵ The Declaration of Principles for International Election Observation was adopted at the United Nations in 2005 and has been endorsed by more than 30 organizations including the AU, European Union, Commonwealth, Organization of American States, National Democratic Institute and Electoral Institute for Sustainable Democracy in Africa.