

**UNIVERSITY OF NAIROBI**

**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**PUBLIC STATEMENTS BY USA, EUROPEAN UNION AND OTHER  
LIKEMINDED PARTNERS ON THE ELECTORAL PROCESSES- A CASE  
STUDY ON KENYAN ELECTIONS**

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## DECLARATION

This research project is my original work and has not been presented for any other academic award in any institution of learning.

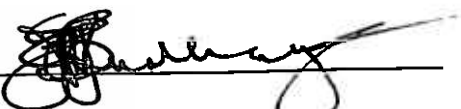
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This research project has been submitted for examination with my approval as university supervisor.

Signed  \_\_\_\_\_

**DR. OCHIENG KAMUDHAYI**

Date 24.10.14

## **DEDICATION**

I dedicate this work to my family and friends. A special feeling of gratitude to my wife, the love of my life, for her encouragement and wonderful support, even through the late nights, where would I be without you? My children for their patience as daddy occasionally 'vanished' to finish his studies and for being my greatest cheerleaders. To Mum, Bro, Sis, Arthur and Peter for praying and standing with me. I will always appreciate all that you have done.

I finally and most importantly dedicate this work to the Almighty God for this far you have brought me and I trust and believe that this is just but only the beginning may your Name receive all the Glory and Honor, for you alone are God.

## **ACKNOWLEDGMENT**

I want to express my deep thanks to my esteemed supervisor Dr. Ochieng Kamudhayi for his brilliant support during the entire period of this study. I would also like to express my appreciation in particular for his patience, guidance and valuable advice during the writing process and for his encouragement to complete. Thank you. I want to also express my deep thanks to the entire teaching and administrative staff of IDIS for all the wonderful assistance while at the institute. Thank you.

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## **LIST OF ACRONYMS**

**ASP:** Assembly of State Parties of the Rome Statute

**AU:** The African Union

**BRICS:** Brazil, Russia, India, China and South Africa

**CAT:** The Convention Against Torture

**CAPF:** Coalition for Accountable Political Financing

**CEDAW:** The Convention on the Elimination of All Forms of Discrimination against Women

**CIPEV:** Commission of Inquiry into Post Election Violence

**CORD:** Coalition of Reforms and Development

**CRC:** The Convention on the Rights of the Child

**EAC:** East African Community

**ECK:** The Electoral Commission of Kenya

**EU:** European Union

**EU:** European Union

**GDP:** Gross Domestic Product

**ICC:** International Criminal Court's

**ICERD:** The International Convention on the Elimination of All Forms of Racial Discrimination

**IEBC:** Interim and Electoral Boundaries Commission

**IMF:** International Monetary Fund

**KANU:** Kenya African National Union

**KNDR:** Kenya National Dialogue and Reconciliation

**KNHCR:** Kenya National Human Rights Commission

**KSHS:** Kenya Shilling

**NARC:** National Rainbow Coalition

**NGOs:** Non-Governmental Organizations

**ODM:** Orange Democratic Movement

**PNU:** Party of National Unity

**SPSS:** Statistical Package for Social Sciences

**TJRC:** Truth Justice and Reconciliation Commission

**TNA:** The National Alliance Party

**UDHR:** Universal Declaration of Human Rights

**UK:** United Kingdom

**UN:** United Nations

**USA:** United States of America

**USAID:** United States Agency for International Development

**USD:** United States Dollar

## **ABSTRACT**

The use of public statements during Kenyan elections by foreign governments and their diplomatic missions has been growing in Kenya, especially since the 2003 General Elections. However, this became even more evident following the 2007/2008 post election violence and the run-up to the 2013 General Elections. Indeed, public diplomacy has been used by foreign missions in Kenya and in particular foreign missions affiliated to the West to influence Kenya's domestic political agenda in the run-up and after General Elections. Matters traditionally thought to be internal such as elections, are increasingly becoming concerns of the international community. Especially as many states are members of the United Nations or have signed and ratified international treaties that bind them to international obligations. This became even more evident in the run-up to the 2013 General Elections, as a major Kenyan Presidential and Deputy Presidential candidate faced trial at the International Criminal Court. Some state parties to the Rome Statute with Foreign Missions in the country used Public Diplomacy, especially public statements to urge the Government of Kenya and the people of Kenya to respect its international obligations to the Court as a state party to the Rome Statute. The study set to explore the implication of public statements in Kenya by western states in particular, the USA, European Union and other like minded partners on the country's electoral processes. The researcher wanted to understand whether public statements by western foreign missions influenced the Kenyan Elections with an emphasis on the 2013 General Elections but looking in detail at the period 2007-2013. The study was carried out in Mathare Slum area A4 and AC which experienced violence following the 2007 General Elections. The study revealed that public statements by foreign governments and their diplomatic missions do influence domestic political agendas however at different levels. At the grassroots the public statements may not have as strong an impact as they do at the national level.

## CHAPTER ONE

### PUBLIC STATEMENTS IN KENYAN ELECTIONS

#### 1.1 Background of the Study

In the media, both print and electronic as well as the emerging social media, a public statement is a written or recorded communication directed at journalists or members of the public at a meeting, convention or rally for the purpose of announcing something ostensibly newsworthy<sup>1</sup>. However, in the past decade the internet has significantly influenced the mode that statements are distributed<sup>2</sup>. Indeed diplomats today are embracing the use of social media such as blogs, twitter and Face book. In Kenya, the British High Commissioner Christian Turner, is one diplomat who has embraced the use of Social Media<sup>3</sup>. Goldstein and Pevehouse<sup>4</sup> have argued that Foreign Policy Makers operate not in a political vacuum but in the context of political debates in their society. Both further argued that societal pressures influence Foreign Policy, although these are aggregated and made more effective through different channels in different societies. The run up to, and following, the March 4 2013 General Elections in Kenya witnessed public statements concerning the elections and those elected made by foreign diplomats from 'western countries' in particular members of the European Union and Northern America countries including the United States of America.

The public statements provide journalists and indeed the wider media fraternity including bloggers with an information subsidy containing the basics needed to develop

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<sup>1</sup>Tom K (2007). *Public Relations Online: Lasting Concepts for Changing Media*. Thousand Oaks: Sage Publications

<sup>2</sup>ibid (2007)

<sup>3</sup>British High Commissioner to Kenya twitter handle <https://www.gov.uk/government/world/kenya>

<sup>4</sup>Goldstein, J. & Pevehouse V. (2011). *International relations*. (9<sup>th</sup> Ed.). Pace House Longman- New York  
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news story<sup>5</sup>. Public statements may also include press releases that announce a range of news items, such as scheduled events, visits or even opinions. Indeed, press releases provide an official announcement or account of a news story that is specially prepared and issued to newspapers and other news media for them to make known to the public<sup>6</sup> and in my opinion also feed into public statements. The end use of public statements especially by politicians is to influence the citizens of a country to buy in to their beliefs or policy for their country or constituency.

In recent times, just as in Kenya in the run-up to the 2013 General Elections, public statements have been issued by the international community and individual states regarding elections around the World. Indeed, matters traditionally thought to be internal such as elections, are increasingly becoming concerns of the international community. Especially as many states are members of the United Nations or have signed and ratified international treaties that bind them to international obligations. For instance, during elections, the international community participates as observers in an effort to ensure that cases of electoral fraud are reported. In addition these observers will also report on any possible signs that ethnic conflicts may lead to genocide.<sup>7</sup>

Most prominent statements are usually from states considered as Great and Middle Powers such as the North American Countries of the United States of America and Canada, European countries such as the United Kingdom, Germany, France and some of the Scandinavian countries and in Asia, China. (In this paper I will use the ter

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<sup>5</sup> Lee M (2013). Yahoo News, *US refuses to accept Venezuela election result*

<sup>6</sup>Modern Ghana (2013). *Ghanaians in UK Protest Ghana Elections 2012 Result*  
<http://www.modernghana.com/news/457913/1/ghanaians-in-uk-protest-ghana-elections-2012-result.html>

<sup>7</sup> Goldstein, J. & Pevehouse V. (2011). *International relations*. (9<sup>th</sup> Ed.). Pace House Longman- New York  
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‘Western Nations’ to mean countries of the global North which will include EU member states and North American countries- U.S and Canada)

For instance, on 14 April 2013, a presidential election was held in Venezuela following the death of President Hugo Chávez<sup>8</sup>. Voters gave Nicolás Maduro, who had assumed the role of acting president since Chávez's death a narrow victory over his opponent Henrique Capriles Radonski, who was a former Governor. Capriles had run in the previous election less than a year before, losing to Chávez by an 11-point margin. This time the margin of victory was much smaller (being 1.5 percent), and thus became the closest Presidential Election in Venezuela since the 1968 election<sup>9</sup>. As a result, the U.S issued public statements warning that they would not recognize the results. The U.S State Department said that a full recount of the vote and an investigation into alleged irregularities were needed, given the close tally that almost evenly divided the country. Indeed, the U.S. had called for a full recount before results were certified but the election commission went ahead with certification without one. This created confusion around the country with violent protests witnessed on the streets of Venezuela<sup>10</sup>.

On another account, in West Africa, following Ghana's December 2012 presidential elections, Western States including the U.S and the E.U released public statement that endorsed Ghanaian President John Dramani Mahama as well as the conduct of the elections amidst an outcry from the opposition led by Mr. Nana Akufo Addo. Indeed, in April 2013, a pressure group in the UK known as the ‘Concerned

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<sup>8</sup>Throup, David W. 2003a. “The Kenya General Election: December 27, 2002.” CSIS: Africa Notes, No. 14. Washington: Center for Strategic and International Studies.

<sup>9</sup>Bratton, Michael, and Nicolas van de Walle. 2013. *Democratic Experiments in Africa: Regime Transitions in Comparative Perspective*. New York: Cambridge University Press.

<sup>10</sup>Linz, Juan J., and Alfred Stepan. 2012. *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press.

Ghanaians Against Electoral Fraud Pressure Group' who had reservations against the Electoral Commission in Ghana planned a demonstration in London to protest what they termed as 'subversion and rigging of the vote' during the General Elections<sup>11</sup>. According to the group evidence suggested over 1.6 million fraudulent votes were manipulated in favor of Ghanaian President John Dramani Mahama. Only months earlier, the UK, the U.S and other states had issued public statements congratulating the people of Ghana on successful elections.

This is despite a petition being before the supreme court of Ghana however the petition has been subjected to numerous delays<sup>12</sup>. The opposition in Ghana, the New Patriotic Party as well as some of their supporters have been dismayed by the way they have been treated perceiving the U.S and the stand taken by other western nations with a sense of betrayal. In December 2012, the U.S urged Ghanaians to accept the results of the country's elections, even though the main opposition challenger for president had not conceded defeat<sup>13</sup>. The police under the command of Mahama's close ally, Inspector General of Police, Mohammed Alhassan were allowed to arrest, detain and prevent any form of protest and demonstration in Ghana<sup>14</sup> despite the statements of Mahama's endorsement by U.S and even the EU.

In East Africa, in the run up to the Kenyan general elections of March, 2013, there was debate on whether or not to allow suspects facing trial for crimes against humanity during the 2007/2008 Post Election Violence at the International Criminal Court to vi

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<sup>11</sup>National Democratic Institute. 2013. "Kenya 2013 Elections." *National Democratic Institute Election Watch* 3(Feb 8).

<sup>12</sup> Africa Review May 10 2013 "no end in sight for Ghana's Presidential election Petition"

<sup>13</sup>Global Post : Ghana Election- US urges voters to accept results- December 10 2012 <http://www.globalpost.com/dispatch/news/regions/africa/ghana/121210/ghana-elections-us-urges-voters-accept-results>

<sup>14</sup>AP: Ghana Police Raid opposition office-December 12 2012 <http://bigstory.ap.org/article/ghana-police-raid-opposition-office>

for presidency or political office. The International Criminal Court's (ICC) charges against Mr. Uhuru Kenyatta and his running mate William Ruto, certainly added controversy<sup>15</sup>. The ICC charges did indeed influence electoral campaigns and the general pre-election situation in Kenya in a number of important ways. Western Nations led by the U.K, maintained through public statements that they will have only essential contacts with both Mr. Kenyatta and Mr. Ruto should they win.<sup>16</sup> The indictments and the positions of EU were used as a campaigning weapon in the hands of their political opponents. Mr. Kenyatta and Mr. Ruto did not shy away from politicizing the charges however, and chose to utilize them in their own campaign. Mr. Kenyatta, in an interview with Al Jazeera News Network <sup>17</sup>accused Western Nations for meddling in Kenyan affairs and, in a very skilful act of political maneuvering, used the election almost as a referendum on the ICC<sup>18</sup>.

<sup>19</sup>Kivutha Kibwana, a former advisor in the President's office, cautioned that indeed the role of the ICC presented foreign governments and various international actors with the delicate dilemma of having to balance the respect for Kenyan sovereignty and democracy with the uncomfortable prospects of having to deal with a president internationally charged with crimes against humanity. <sup>20</sup>He further observes that the fragility of this balancing act was most clearly displayed in February 2013 when the United States (US) Assistant Secretary of State for African Affairs, Jonnie Carson cautioned Kenyans that "choices have consequences," clearly referring to the potenti

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<sup>15</sup>Warigi, Gitau. 2013. "The Ghost of 2013 Failure." *Daily Nation (Kenya)*, January 13.

<sup>16</sup>Citizen Television interview with UK High Commissioner Christian Turner- February <http://www.youtube.com/watch?v=QTZIZGGKN5Y>

<sup>17</sup>Aljazeera: Uhuru Kenyatta- Not a Banana Republic- January 23 2013<http://www.aljazeera.com/programmes/talktojazeera/2013/01/20131228450568673.html>

<sup>18</sup>Warigi, Gitau. 2013. "The Ghost of 2013 Failure." *Daily Nation (Kenya)*, January 13.

<sup>19</sup>Kibwana, Kivutha. 2013. "Tribal Politics Proven Right." *Daily Nation (Kenya)*, January 8.

<sup>20</sup>ibid. (2013).



impacts of the choice of president on the diplomatic relations between the two countries. Such statements reinforced an already tense diplomatic situation and provided yet another reminder of the high stakes at play<sup>21</sup>.

## 1.2 Statement of the Research Problem

Over the past two decades there has been debate on elections around the World with great and middle powers in some instances being accused of taking sides and thus influencing election outcomes. In May, 2005, Ethiopians went to the polls where the electoral board's final results showed that the late Prime Minister Meles Zenawi's ruling Ethiopian Peoples' Revolutionary Democratic Front and allies won enough seats in the 547 member parliament to form the next government<sup>22</sup>. In contrast, the main opposition parties, the Coalition for Unity and Democracy and the United Ethiopian Democratic Forces, alleged widespread fraud and threatened not to take their seats when the new parliament convened. The former U.S. president and international elections observer Jimmy Carter urged Ethiopia's opposition parties to take their seats in parliament as he gave qualified support for the country's disputed election. Disputes over the elections in effect sparked street protests in July, 2005 in which 36 people died when police opened fire on demonstrators<sup>23</sup>.<sup>24</sup> Joel Barkan, a Political Professor at the University of Iowa has noted that there have always been abnormalities in elections including in Kenya.

Kenya, once touted as the East African economic "darling" and "East Africa power house", has in the past five years spent much of its time replenishing itself after

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<sup>21</sup>Press Statement John Kerry Secretary of State Washington, DC March 9, 2013

<sup>22</sup>Barkan, Joel D. 2013. "New Forces Shaping Kenyan Politics." *CSIS: African Notes No. 18*. Washington Center for Strategic and International Studies.

<sup>23</sup>Barkan, Joel D. 2013. "New Forces Shaping Kenyan Politics." *CSIS: African Notes No. 18*. Washington Center for Strategic and International Studies.

<sup>24</sup>Human Rights Watch. 2013. "Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya." New York: Human Rights Watch.

the political crisis that struck the country in 2007. Indeed, before the electoral crisis Kenya registered real Gross Domestic Product (GDP) percentage changes of 5.4 percent, 6.1 percent and 6.7 percent over the period 2004-2006 respectively. However, over 2007-2008 – following the political crisis this rate plummeted to a rate of 3.9 percent.

Although Kenya's dependence on Foreign Aid has been relatively small, and as noted by the World Bank in 2011, only some 15 percent of Kenya's public expenditures was foreign-financed<sup>25</sup>, donor countries have leveraged their financial support to influence their position within Kenya politics.

For instance in 2012 the U.S Government through USAID provided foreign aid assistance of over USD 200 million in the areas of Health, Education, Economic Growth, Democracy and Governance and counter terrorism<sup>26</sup>. Canada through the Canadian International Development Agency provided in 2011-12, approximately \$58.02 million in support of development initiatives in Kenya, including \$6.04 million to Canadian non-governmental organizations (NGOs).<sup>27</sup> In a 2011 interview the Head of the British Government's Department for International Development in Nairobi, he noted that the UK was spending about £70 million in 2010/11. He also noted that the British Government had in 2011/12 allocated £100 million, in 2012/13 £110m and in the following two years £150m each.<sup>28</sup> Although these are only examples of three western nations aid contribution to the country, their involvement has indeed provided them with some form of leverage to influence discussions within the political scene in Kenya.

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<sup>25</sup> Fengler Wolfgang -The World Bank: Three Myths About aid to Kenya-November 14 20  
<http://blogs.worldbank.org/african/three-myths-about-aid-to-kenya>

<sup>26</sup>USAID Kenya Budget FY 2012 <http://kenya.usaid.gov/budget-usaid-kenya>

<sup>27</sup>Canada- Kenya Relations- High Commission of Canada in Kenya  
[http://www.canadainternational.gc.ca/kenya/bilateral\\_relations\\_bilaterales/canada-kenya.aspx?menu\\_id=](http://www.canadainternational.gc.ca/kenya/bilateral_relations_bilaterales/canada-kenya.aspx?menu_id=)

<sup>28</sup>Capital Fm: UK funding to Kenya could double by 2014- June 17 20  
<http://www.capitalfm.co.ke/eblog/2011/06/17/uk-funding-to-kenya-could-double-by-2/>

Further the possible indictment of three prominent Kenyans (including Mr. Kenyatta and Mr. Ruto currently President and Deputy President of Kenya respectively) at the ICC for possible crimes against humanity following the 2007/2008 post election violence continues to provoke discussions and debate that are not only relevant to Kenya but also peace-building institutions and supporters of the ICC, including member states of the ICC, the United Nations as well as civil society and human rights organizations. The ICC has had unintended consequences on the Kenyan elections: public statements from former UN Secretary General and Chief Mediator following the 2007/08 post election violence, Kofi Annan<sup>29</sup>, United States African envoy Johnnie Carson<sup>30</sup> and some European countries<sup>31</sup> against electing ICC suspects went unheeded as both Mr. Kenyatta and Mr. Ruto's popularity grew with every intervention, judging from the popularity polls conducted at that time<sup>32</sup>. The duo managed to craft a narrative around their role as revolutionaries, defying 'western imperialists' who seek to undermine Kenya's sovereignty. On campaign trails, both Mr. Kenyatta and Mr. Ruto asked voters to reject the CORD coalition led by then Prime Minister, Raila Odinga accusing CORD of being part of an imperialist agenda. They were able to cleverly flip public opinion through public statements made at rallies against the ICC to suit their ends and it worked.

Although it can be argued that Kenya is not yet a nation state, Kenyan citizens do appreciate the country's sovereignty as this study found out from sections of Kenyan citizens following the public statements by Canada, EU, U.K and the US on the outcome

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<sup>29</sup>BBC World Service online edition: Kofi Annan urges Kenyans not to vote for indicted politicians December 4 2012

<sup>30</sup>Mathenge Oliver and Nzau Musau: US warns of ICC consequences- The Star Newspaper- February 2013 pp 1

<sup>31</sup>Mwere David and Ibrahim Oruko: Back off Kenya tells EU envoy- The Star Newspaper- February 1 2013 pp1

<sup>32</sup>Ikenye Sophie: Kenya elections: Uhuru Kenyatta leads Raila Odinga- BBC World Service online editor March 5 2013

of Kenyans elections when Kenyans voted for an ICC indicted individual as president. No study so far, to the best of the researchers' knowledge has been conducted to critically examine the public statements by U.S, U.K, EU and other western nations on the outcome of Kenyans elections. In light of this there is the need to empirically access and analyse the phenomenon for political implications these public statements made prior to the elections have had on Kenya.

### **1.3 Objectives of the Study**

#### **Main Objective**

The main objective of this study is to investigate the implication of public statements by USA, European Union and other likeminded partners on the outcome of Kenya's March 4 2013 General elections.

#### **Specific Objectives**

The study was guided by the following specific objectives;

- i. To assess the extent of influence foreign missions in Kenya have on the outcome of General elections
- ii. To investigate how statements can be manipulated by both foreign missions and politicians to influence the perception of Kenyan citizens

### **1.4 Justification of the Study**

Elections in Kenya tend to largely be driven by power, power by certain ethnic groups to hold leadership or by individuals that are unwilling to relinquish power that they have received by the virtue of the leadership of the country. In addition, in an ever globalizing world, Kenya is continually finding itself being asked to join the rest of the international community in adopting values such as democracy, good governance, human

rights and rule of law without quite understanding what these values mean or their long term implications. On the other hand, through non-governmental organizations and civil society, the citizenry are continuously bombarded with information in relation to these values. Many a time successfully, and with a ripple effect of demands for accountability from the state. This values, many encouraged by western nations has led to an ideological struggle between state, politicians and citizenry, leading to the state as well as politicians using media and other communication tools to try and influence or counter information provided by these NGOs, CSOs, diplomats or even information that may have slipped through the internet, which in Africa is a growing mode of communication, due to the large number of mobile phones available.

Looking at Kenya and the 2013 General Elections, the use of public statements to counter or influence the above mentioned values came to the fore, particularly as this was the first election following the post election violence of 2007 that witnessed over 1,500 Kenyans die in violence following a disputed election and hundreds of thousands displaced from their homes. Public statements were not only used by the state and politicians but also other actors such as foreign diplomatic missions in Kenya and even regional and international bodies such as the AU, UN, ICC among others used public statements as well as other communication tools to influence or counter ideas. Indeed the current ICC cases facing three prominent Kenyans has been played more in the media than in the court rooms at the Hague.

It is therefore the argument of this study that the research findings will contribute to a better understanding of how public statements influence Kenyan elections patterns and perceptions of the citizenry and help policy makers in planning for future elections

and interventions to counter negative discourse during and after elections. This may enable focused intervention strategies and also coordinate efforts aimed at facilitating free, fair and transparent elections and enable discussion on putting in place policy to fundamentally regulate what can be said prior, during and after an election and by who. This study will therefore go a long way to breach the academic and policy gap existing today in the link between public statements and public perception in regards to various democratic values and international obligations by states in Africa and in particular Kenya and open the doors for future research in this area. The findings of the study will act as reference material for other future researchers.

### **1.5 Literature Review**

The literature review in this study summarized the information from other researchers who had carried out their research in the same sphere. The study specifically covers neorealism, concept of the harmony of interests in Kenya and the Kenya political realism discussions.

#### **1.5.1 Kenya Political Realism**

Human nature, in which the laws of politics have their roots, has not changed since the classical philosophies of China, India, and Greece endeavoured to discover these laws. Political realism considers a rational foreign policy to be good foreign policy; for only a rational foreign policy minimizes risks and maximizes benefits and, hence, complies both with the moral precept of prudence and the political requirement of success<sup>33</sup>. Hans Morgenthau has argued that political realism wants the photographic picture of the political world to resemble as much as possible its painted portrait. Aware

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<sup>33</sup> Baylis J & Smith S. (2008). *The globalization of world politics*, Baton Rouge: Louisiana State University Press. —, 1985. *Moralism and Morality in Politics and Diplomacy*, Lanham, MD: Chenandi, India pg 36-47.

of the inevitable gap between good that is, rational foreign policy and foreign policy as it actually is, political realism maintains not only that theory must focus upon the rational elements of political reality, but also that foreign policy ought to be rational in view of its own moral and practical purposes<sup>34</sup>.

Political realism refuses to identify the moral aspirations of a particular nation with the moral laws that govern the universe. As it distinguishes between truth and opinion, so it distinguishes between truth and idolatry. All nations are tempted-and few have been able to resist the temptation for long-to clothe their own particular aspirations and actions in the moral purposes of the universe.<sup>35</sup> according to Morgenthau nations are subject to the moral law is one thing, while to pretend to know with certainty what is good and evil in the relations among nations is quite another. The difference, then, between political realism and other schools of thought is real, and it is profound. As political realist, Morgenthau asserts that one cannot but subordinate these other standards to those of politics. One of the challenges facing Kenya includes the tendency of manipulating ethnic identities for private interest.<sup>36</sup> We can grasp the root causes of the prevailing ethno-political competition, discrimination, and violence insofar. Problems challenging Kenyan political life are numerous, and some of them are cultural in the sense that they are related to cherished practices inherited from indigenous cultures. It could be argued that such problems do not only result from the imposition of European colonial rule with its concomitant introduction of Western values and institutions. Rather,

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<sup>34</sup> Williams, Michael C. (ed.), 2007. *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations*, Oxford: Oxford University Press pg 78.

<sup>35</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, Fifth Edition, New York: Alfred A. Knopf, 1978, pg. 113-125.

<sup>36</sup>Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, Fifth Edition, New York: Alfred A. Knopf, 1978, pg. 113-125.

some of the problems are related to the Kenyan capacity to grapple with Kenya's political growth over the past half century, especially the challenge to integrate ethnic identities into the structure of the nation-state<sup>37</sup>.

In his main work on international relations, *Politics among Nations*,<sup>38</sup> Morgenthau attacks the idealist position, which he describes as "utopianism." He characterizes this position as encompassing faith in reason, confidence in progress, a sense of moral rectitude, and a belief in an underlying harmony of interests. According to the idealists, such as Woodrow Wilson, war is an aberration in the course of normal life and the way to prevent it is to educate people for peace, and to build systems of collective security such as the League of Nations or today's United Nations. Morgenthau challenges idealism by questioning its claim to moral universalism and its idea of the harmony of interests<sup>39</sup>. He declares that "morality can only be relative, not universal and states that the doctrine of the harmony of interests is invoked by privileged groups to justify and maintain their dominant position of which may be the case with Kenya and the ICC an issue politicized by the Western powers as the ICC is viewed as a court with a western agenda by many African Heads of State.

Morgenthau<sup>40</sup> uses the concept of the relativity of thought, which he traces to Marx and other modern theorists, to show that standards by which policies are judged are the products of circumstances and interests. His central idea is that the interests of a given party always determine what this party regards as moral principles, and hence, these

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<sup>37</sup> Dackson R. & Sorensen G (1999). *International relations*. New York: Oxford University Press p. 165-188.

<sup>38</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, Fifth Edition, New York: Alfred A. Knopf, 1978, pg. 113-125.

<sup>39</sup> Khadiagala & Terrence L. (2001) *Realism and International Relations*: United Kingdom (lynne riene Press, 2001), pp. 11-12.

<sup>40</sup> Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, Fifth Edition, New York: Alfred A. Knopf, 1978, pg. 113-125.



principles are not universal. Morgenthau observes that politicians, for example, often use the language of justice to cloak the particular interests of their own countries, or to create negative images of other people to justify acts of aggression. The existence of such instances of morally discrediting a potential enemy or morally justifying one's own position shows, he asserts, that moral ideas are derived from actual policies. Policies are not, as the idealists would have it, based on some universal norms, independent of interests of the parties involved<sup>41</sup>.

If specific moral standards are de facto founded on interests, Morgenthau's argument goes, there are also interests underlying what are regarded as absolute principles or universal moral values. While the idealists tend to regard such values, such as peace or justice, as universal and claim that upholding them is in the interest of all, Morgenthau asserts against this view (*ibid*). These views have been supported by other realists such as E.H. Carr. Indeed looking back at the rise of fascism the impact of Stalin, the USSR domination of Eastern Europe and the cold war era, national interest was defined in terms of power. Realists have claimed that those who refer to universal interests are in fact acting in their own interests<sup>42</sup>. They think that what is best for them is best for everyone, and identify their own interests with the universal interest of the world at large which directly correlate with the Kenya status quo in regards to the ICC and the support by the Kibaki government witnessed to both Uhuru Kenyatta and William Ruto in regards to having the ICC cases quashed prior to the March 2013 General elections.

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<sup>41</sup>Hans J. Morgenthau, "We Are Deluding Ourselves in Viet-Nam", *New York Times Magazine*, April 18 1965, reprinted in *The Viet-Nam Reader*, ed. M. Raskin and B. Fall (Vintage Books, 1967), pp. 37-45.

<sup>42</sup>William E. Scheuerman, *Hans Morgenthau: Realism and Beyond* (Polity Press, 2009); Michael C Williams, ed., *Reconsidering Realism: The Legacy of Hans J. Morgenthau* (Oxford Univ. Press, 2007) Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography* (LSU Press, 2001).

### 1.5.2 Concept of the Harmony of Interests in Kenya

The idealist concept of the harmony of interests is based on the notion that human beings can rationally recognize that they have some interests in common, and that cooperation is therefore possible. Indeed, idealists, who in my opinion a lot of civil society activists emphasize the power of reason to overcome prejudice and counteract the machinations of sinister forces. They believe that the spread of education and democracy—including increasing democratic control of foreign policy—will empower world public opinion, and make it a powerful force that no government can resist. This was recently seen when Kenyan Civil Society organizations wrote letters to the ICC asking it not to terminate Kenyan cases before the court while back in Kenya they carried nationwide civic education on the cases and provided human rights education to victims of the post-election violence of 2007. Indeed, Giuseppe Mazzini, Italian idealist, believed that collective security, compulsory adjudication of disputes, national disarmament, open diplomacy and international accountability were the most cherished political prescriptions.

Morgenthau contrasts this idea with the reality of conflict of interests. According to him, the world is torn apart by the particular interests of different individuals and groups. In such a conflictual environment, order is based on power, not on morality. Further, morality itself is the product of power<sup>43</sup>. Like Morgenthau,<sup>44</sup> E.H Carr regards morality as constructed by the particular legal system that is enforced by a coercive power. International moral norms are imposed on other countries by dominant nations or groups of nations that present themselves as the international community as a whole.

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<sup>43</sup> Williams, Michael C. (ed.), 2007. *Realism Reconsidered: The Legacy of Hans Morgenthau in International Relations*, Oxford: Oxford University Press pg 78.

<sup>44</sup>Zambarnardi, L. (2011). "The Impotence of Power: Morgenthau's Critique of American Intervention in Vietnam". *Review of International Studies*37 (3): 1335–1356.

They are invented to perpetuate those nations' dominance. Carr has further argued that Power was a decisive factor in every political situation, and one could no more abolish power than abolish politics. Power, whether used, threatened, or held silently in reserve, was an essential factor in international change, and change would only be brought about by whom or in the interests of whom power could be wielded.

Values that idealists view as good for all, such as peace, social justice, prosperity, and international order, are regarded by Dackson as mere status quo notions. The powers that are satisfied with the status quo regard the arrangement in place as just and therefore preach peace. They try to rally everyone around their idea of what is good. Just as the ruling class in a community prays for domestic peace which guarantees its own security and predominance so does the international peace becomes a special vested interest of predominant powers<sup>45</sup>. On the other hand, the unsatisfied powers consider the same arrangement as unjust, and so prepare for war. Hence, the way to obtain peace, if it cannot be simply enforced, is to satisfy the unsatisfied powers. Those who profit most by international order can in the longer run only hope to maintain it by making sufficient concessions to make it tolerable to those who profit by it least. The logical conclusion to be drawn from scholars like Carr is the policy of appeasement.

Carr was a sophisticated thinker. He recognized himself that the logic of pure realism can offer nothing but a naked struggle for power<sup>46</sup>. Although he demolishes what he calls “the current utopia” of idealism, he at the same time attempts to build “a new

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<sup>45</sup>Dackson R. & Sorensen G (1999). *International relations*. New York: Oxford University Press p. 165-188.

Khadiagala & Terrence L. (2001) *Realism and International Relations: United Kingdom* (lynne riener Press, 2001), pp. 11-12.

<sup>46</sup>William E. Scheuerman, *Hans Morgenthau: Realism and Beyond* (Polity Press, 2009); Michael C. Williams, ed., *Reconsidering Realism: The Legacy of Hans J. Morgenthau* (Oxford Univ. Press, 2007); Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography* (LSU Press, 2001).

utopia,” a realist world order. Thus, he acknowledges that human beings need certain fundamental, universally acknowledged norms and values, and contradicts his own argument by which he tries to deny universality to any norms or values. To make further objections, the fact that the language of universal moral values can be misused in politics for the benefit of one party or another, and that such values can only be imperfectly implemented in political institutions, does not mean that such values do not exist. There is a deep yearning in many human beings, both privileged and unprivileged, for peace, order, prosperity, and justice. This can be evidenced by the continued calls for peace by both Uhuru Kenyatta and William Ruto during their campaign trail prior to the March 4 general elections. The legitimacy of idealism consists in the constant attempt to reflect upon and uphold these values. Idealists fail if in their attempt they do not pay enough attention to the reality of power. On the other hand, in the world of pure realism, in which all values are made relative to interests, life turns into nothing more than a power game and is unbearable<sup>47</sup>.

### 1.5.3 Neorealism Concept

Baylis and Smith<sup>48</sup> maintain that by paying attention to the individual state, and to ideological, moral and economic issues, both traditional liberals and classical realists make the same mistake. They fail to develop a serious account of the international system one that can be abstracted from the wider socio-political domain. Baylis and Smith acknowledge that such an abstraction distorts reality and omits many of the factors that were important for classical realism. It does not allow for the analysis of the development

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<sup>47</sup>Zamernardi, L. (2011). "The Impotence of Power: Morgenthau's Critique of American Intervention in Vietnam". *Review of International Studies*37 (3): 1335–1356.

<sup>48</sup> Baylis J & Smith S. (2008). *The globalization of world politics*, Baton Rouge: Louisiana State University Press. —, 1985. *Moralism and Morality in Politics and Diplomacy*, Lanham, MD: Chenandi, India pg 36-47.

of specific foreign policies. However, it also has utility. Notably, it assists in understanding the primary determinants of international politics. Baylis and Smith's neorealist theory cannot be applied to domestic politics. It cannot serve to develop policies of states concerning their international or domestic affairs. His perception helps only to explain why states behave in similar ways despite their different forms of government and diverse political ideologies, and why, despite of their growing interdependence, the overall picture of international relations is unlikely to change.

According to Baylis and Smith<sup>49</sup>, the uniform behavior of states over centuries can be explained by the constraints on their behavior that are imposed by the structure of the international system. A system's structure is defined first by the principle by which it is organized, then by the differentiation of its units, and finally by the distribution of capabilities (power) across units. Anarchy, or the absence of central authority, is for Baylis and Smith the ordering principle of the international system. The units of the international system are states. Baylis and Smith recognizes the existence of non-state actors, but dismisses them as relatively unimportant. Since all states want to survive, and anarchy presupposes a self-help system in which each state has to take care of itself, there is no division of labor or functional differentiation among them. While functionally similar, they are nonetheless distinguished by their relative capabilities (the power each of them represents) to perform the same function.

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<sup>49</sup> Baylis J & Smith S. (2008). *The globalization of world politics*, Baton Rouge: Louisiana State University Press. —, 1985. *Moralism and Morality in Politics and Diplomacy*, Lanham, MD: Chenandi, India pg 36-47.

Consequently, neorealists see power and state behavior in a different way from the classical realists. For the ICC and the use of it in public statements by some western missions in Kenya prior to the 2013 General elections, the support of the ICC process provided them an avenue for power as it became both a means and an end, and rational state behavior according to Baylis and Smith was understood as simply the course of action that would accumulate the most power. In contrast, neorealists assume that the fundamental interest of each state is security and would therefore concentrate on the distribution of power. What also sets neorealism apart from classical realism is methodological rigor and scientific self-conception<sup>51</sup>. Baylis and Smith insists on empirical testability of knowledge and on falsificationism as a methodological ideal, which, as they admit, can have only a limited application in international relations.

The distribution of capabilities among states can vary; however, anarchy, the ordering principle of international relations, remains unchanged. This has a lasting effect on the behavior of states that become socialized into the logic of self-help where Kenya belongs. Trying to refute neoliberal ideas concerning the effects of interdependence<sup>52</sup> identifies two reasons why the anarchic international system limits cooperation: insecurity and unequal gains. In the context of anarchy, each state is uncertain about the intentions of others and is afraid that the possible gains resulting from cooperation may favor other states more than itself, and thus lead it to dependence on others. States do not willingly place themselves in situations of increased dependence as was witnessed in

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<sup>50</sup>Khadiagala M. & Terrence L. (2001) *Realism and International Relations: United Kingdom* (lynne riener Press, 2001), pp. 11-12.

<sup>51</sup>Zambernardi, L. (2011). "The Impotence of Power: Morgenthau's Critique of American Intervention in Vietnam". *Review of International Studies* 37 (3): 1335–1356.

<sup>52</sup>Dackson R. & Sorensen G (1999). *International relations*. New York: Oxford University Press p. 165-188.

former vice-president Kalonzo Musyoka's shuttle diplomacy in gaining support against the Kenyan ICC cases.

## **1.6 Theoretical Review**

Although realism's predictions are challenged by game-theoretic analyses within the state-centric context, so too is its axiom challenged that what happens within states is of limited significance for international politics. This challenge arises from game theoretic studies that rely on political economy assumptions, especially studies regarding the democratic peace and elections outcomes. In both areas, the political-economy perspective, like realism in other arenas, offers not only analytic insights but also practical, accessible policy guidance to decision makers.<sup>53</sup> While explaining the democratic peace's empirical regularities, it also offers a cautionary tale for those who infer that because pairs of democracies tend to interact peacefully, therefore democracies have incentives to promote global democratic reform. From this comes the basis of realism theory which will anchor the study.

The political economy perspective, with its emphasis on domestic political interests and incentives, uncovers the logic that differentiates the countries policies of democratic and non-democratic leaders. Defeat in war, for instance, is costly for society and therefore for accountable democratic leaders more so than for non accountable autocrats, monarchs, or junta leaders.

### **1.6.1 Realism Theory**

Realism (or political realism) is a school of thought that explains inter-national relations in terms of power. The exercise of power by states toward each other is

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<sup>53</sup>Barkan, Joel D. 2013. "New Forces Shaping Kenyan Politics." *CSIS: African Notes No. 18*. Washington: Center for Strategic and International Studies.

sometimes called real politic or just power politics. Politics is regarded not only as something apart from law, but inferior to law; and the concern of recent political philosophy was to state the principles of an ideal liberal constitution. The real subject of this effort “was not political. It was law”<sup>54</sup>.

<sup>55</sup>Bernard Williams offers a succinct summary of this line of argument, he points to a mysterious phenomenon namely, the displacement of politics in political theory, especially though not exclusively contemporary political theory: Those writing from diverse positions republican, liberal, and communitarian converge in their assumption that success lies in the elimination from a regime of dissonance, resistance, conflict, or struggle<sup>56</sup>. They confine politics to the juridical, administrative, or regulative tasks of stabilizing moral and political subjects, building consensus, maintaining agreements, or consolidating communities and identities. They assume that the task of political theory is to resolve institutional questions, to get politics right, over, and done with, to free modern subjects and their sets of arrangements [from] political conflict and instability<sup>57</sup>.

Realists reject this account of political theory on the grounds that it is utopian in the wrong way that it does not represent an ideal of political life achievable under even the most favorable circumstances. Tranquility is fleeting at best; conflict and instability are perennial possibilities. The yearning for a world beyond politics is at best

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<sup>54</sup> Marc Stears, “Review Article: Liberalism and the Politics of Compulsion,” *British Journal of Political Science* 37 (2007): 543.

<sup>55</sup> Bernard Williams, *In the Beginning Was The Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005), pp. 1-3.

<sup>56</sup> John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001), p. 13

<sup>57</sup> Marc Stears, “Review Article: Liberalism and the Politics of Compulsion,” *British Journal of Political Science* 37 (2007): 543.



diversionary, at worst destructive. As Marc Stears<sup>58</sup> insists, there is no substitute for politics if by politics we mean the various ways in which we arrive at collective, authoritative decisions in a world in which people legitimately hold different views about the purposes of government and the manner in which it should be carried on.

### **1.7 Hypothesis**

The study was guided by the following hypothesis:

- i. Public statements made by foreign government and diplomats influence the outcome of General Elections in Kenya
- ii. Media is a powerful tool used by politicians and diplomats in influencing perceptions of the electorate prior to elections in Kenya
- iii. Ethnicity influences the outcome of elections in Kenya
- iv. Treaties and international obligations influence the outcome of elections in Kenya

### **1.8 Research Methodology**

#### **1.8.1 Research Design**

The research design to be used in this study is descriptive survey. The researcher has chosen this research design because the study aims at collecting information from respondents on their attitudes and opinions in relation to implication of public statements by USA and European Union on the outcome of Kenyans elections.

#### **1.8.2 Location of the Study**

The scope of this study included registered voters of the Mathare informal settlement with an emphasis on section A1 and AC. The Mathare informal settlement has administration boundaries in form of villages namely Mathare 4 A Kosovo, Mathare Area

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<sup>58</sup>Marc Stears, "Review Article: Liberalism and the Politics of Compulsion," *British Journal of Political Science* 37 (2007): 543.

1, Mathare Area 2, Mathare Area 3, Bondeni, , Huruma, AC Kijiji cha Chewa/Dubai, No. 10 / Mashimoni, Ghetto, Kia Maiko and Madoya. The slum spans across two parliamentary constituency boundaries namely, Starehe and Kasarani constituencies under the jurisdiction of two members of the National Assembly. There are four predominant ethnic groups living in the informal settlement namely; the Luo, Kikuyu, Kamba and Luhya.

The study was carried out in Mathare Slum are A4 and AC. The choice of the area is that Mathare Slum is one of the oldest slums in Africa. The researcher is familiar with the area and since its situated three Kilometers east of Nairobi city's central business district the location is hence close to the researcher making it cost and time effective. This area is a hotspot for election violence since 2007 general election<sup>59</sup>. The study used the residents of this area as a sample to gather insight into the implication of public statements made by western nations and their likeminded partners on the outcome of Kenya's March 4 2013 General elections.

### **1.8.3 Target Population**

Mathare slum is home to over 700,000 people occupying an area of two miles long by one mile wide. The focus of the study was residents of Mathare 4A Kosovo which the Luo community dwell and AC Kijiji cha chewa/Dubai for Kikuyu community residents<sup>60</sup>. The study also picked 50 respondents randomly in Nairobi.

### **1.8.4 Sample Design**

The focus of the study is residents of Mathare 4A Kosovo and AC Kijiji cha Chewa/Dubai. The two areas are densely populated with a total of 250, 000 residents.

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<sup>59</sup>*Daily Nation* (Kenya), Editorial. 2012. "Onus is on the Opposition." February 24.

<sup>60</sup>Warigi, Gitau. 2013. "The Ghost of 2013 Failure." *Daily Nation (Kenya)*, January.13.

Since the population is over 10,000, the following sample determination where the population is above 10,000 will be used.

The sample size is determined using statistical population surveys whereby:

$$N = Z^2 * pq / d^2$$

Where N = desired minimal sample size (where pop > 10,000)

Z = Standard normal deviation which is equal to 1.96 at 95% confidence level.

P = Proportion of the target population estimated to have a particular characteristic being measured. In this case it is estimated to be 0.5.

$$q = 1 - P$$

d = the level of statistical significance set which in this case is 0.05.

$$\begin{aligned} N &= 1.96^2 \times 0.5 \times 0.5 / 0.05^2 \\ &= 384 \end{aligned}$$

In order to obtain reliable results from the study it is necessary to have a representative sample, hence the sample size will be 384.

### **1.8.5 Data Collection Instruments**

The study collected both primary and secondary data. Primary data was collected by the use of questionnaire and secondary data from newspapers cuttings, online news, Press Statements, academic journals and research publications and magazines.

### **1.8.6 Data Analysis**

Data collected was sorted, classified and coded then tabulated for ease of analysis. The data in this study is summarized and categorized according to common themes. Data collected was analyzed using frequency distribution tables, descriptive statistics and inferential statistics. The SPSS (version 17) computer software aided in the analysis as it

is more user friendly and most appropriate for analysis of Management related attitudinal responses<sup>61</sup>. In regards to secondary data content analysis was used.

## **1.9 Chapter Summary**

The study looks into the implication of public statements by US and EU and other likeminded partners on the outcome of Kenyans elections and in particular the March 4 2013 general elections. The chapters of the study are as follows: Chapter one Introduction: In this chapter, a high level background will be provided of the scope of the research to be undertaken. Chapter two; Theoretical Discussion: In this chapter, a conceptual view and theories related to the study will be provided. Relevant aspects of public statements and theories will be addressed. Chapter three Observations: In this chapter a literature review will be provided on the implication of public statements by Western Nations (and in particular the U.S and EU) on the outcome of Kenyans elections. Specific focus will be levelled on ethnicity, International legal processes and public statements made by Western nations. Chapter four A Critical Analyses: In this chapter, the three hypotheses of co ethnicity, International legal processes and public statements made by Western nation's factors will be critically analyzed in a more scholarly perspective. Chapter five Conclusions: In this chapter the research will be concluded, recommendations will be made and final analogies of the research will be drawn.

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<sup>61</sup> Dunlap, H. F. (1931). An empirical determination of means, standard deviations and correlation coefficients drawn from rectangular distributions. *Annals of Mathematical Statistics*, 2, 66–81.

## **CHAPTER TWO**

### **THE POLITICAL GROUND IN KENYA: AN OVERVIEW**

#### **2.1 Introduction**

Chapter one has indicated how the study will be analyzed in details. The chapter has shown the problem to be researched as well as objectives of the study. In this chapter, a full analysis of the complexities of the historical political context is presented in order to sketch in some major features, particularly for those who may be unfamiliar with the political situation that influenced Kenya's March 4 2013 General elections.

#### **2.2 Mass Media in Historical Perspective**

The mass media forms the backbone of democracy as they provide voters with political information which they use in electing their leaders as well as act as public watchdog. In Kenya, the mass media serves four political functions that include: news making, interpretation, socialization, persuasion and agenda setting.<sup>1</sup> Through these functions, the mass media create political issues they consider of importance to the public, define their meanings and consequences and ultimately cause the shift of public opinions and attitudes. An example is when the media gives more coverage to elections than to the government's development agenda such as farming. News making is all about making decisions of "who" and "what" will appear in the news. Media coverage helps the general public know about personalities whom they have little direct encounters, events or organization. Viewers are also likely to believe news on distant figures such as the president since they have no personal experience with them. However, their opinions on religions or ethnicity are not likely to be influenced by media coverage because they have

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<sup>1</sup>Kenya, CIC (Commission for the Implementation of the Constitution), 'Bill Tracker', [http://www.cickenya.org/bill\\_tracker?page=1](http://www.cickenya.org/bill_tracker?page=1), accessed 24 August 2012.

their own personal experience of them. At the same time, politicians understand that a high amount of media coverage tells people what is important and this explains why they struggle to get the attention of the media. They achieve this by coming up with what is referred to as media events which among other qualities should attract an unusual audience.<sup>2</sup> The major newspapers in Kenya are the Daily Nation, The Standard, The Star and the People, with devolution there is a growing number of county based newspapers as well. In addition with Kenya's digital migration there are several TV stations. Kenya also has several radio stations broadcasting across the counties.

### **2.3 Kenya Political Background**

Between independence from Britain in 1963 and the early 2000s, Kenyan politics was dominated by the Kenyan African National Union (KANU)<sup>3</sup>. Under both the first president, Jomo Kenyatta, and his successor, Daniel Arap Moi, initial political freedom was severely curtailed and opposition party activism was suppressed. Competition between the more than 40 ethnic groups over access to natural and political resources (land and water but also government funds) were controlled by an intricate system of divide and rule and forcefully kept in check through the provincial administration, police and other branches of the state security apparatus<sup>4</sup>.

In the early 1990s, President Moi relented to strong domestic and international pressure to end Kenya's de facto one-party system. In 1991 a constitutional amendment introduced a more pluralist political system and paved the way for the first multiparty

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<sup>2</sup>Kenya, IEBC (Independent Electoral and Boundaries Commission), 'Home', <http://www.iebc.or.ke/index.php/Page-4.html>, accessed 24 August 2012

<sup>3</sup>Gilbao, Eytan. *Media and conflict: framing issues, making policy, shaping opinion*. Transitional publisher, 2013: New York.

<sup>4</sup>Wachira N & C Onyango-Obbo, 'How Kenya lost its standing in the outside world', *Africa Review*, 31 January 2011, <http://www.africareview.com/Special+Reports/-/979182/1098906/-/11b0orxz/-/index.html>.

legislative and presidential elections in 1992<sup>5</sup>. The elections were however flawed, characterized by poor organization, a high incidence of violence, and an uneven playing field. These irregularities, in combination with damaging splits in the opposition, enabled KANU and President Moi to hold on to power in 1997 as well. By the end of the 1990s, civil society organizations, opposition parties and international actors had become more united in their denunciation of the poor record of human rights violations, endemic corruption and impunity of the Moi government. Internationally supported domestic election monitoring efforts played an important role in this. A decade later, more than 14 opposition parties, as well as leaders from different ethno-regional communities and various prominent civil society representatives, came together to form the National Rainbow Coalition (NARC). In Kenya's first truly democratic elections in 2002, NARC secured a comfortable parliamentary majority and its popular presidential candidate Mwai Kibaki defeated KANU's Uhuru Kenyatta<sup>6</sup>.

Following the election and with an excitement of change in Kenya that had only known one president since the death of President Jomo Kenyatta, the announcement by the NARC government of a series of reforms, led both Kenyan civil society organizations and international agencies stepped up engagement with the new government. The Kibaki administration introduced free universal primary education, dismissed almost half of Kenya's senior judges, established several new commissions to look into major corruption scandals (including those involving Goldenberg and Anglo-Leasing) and

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<sup>5</sup> Gilbao, Eytan. *Media and conflict: framing issues, making policy, shaping opinion*. Transitional publisher, 2013: New York.

<sup>6</sup>Mwagiru M, 'The Missing Link in the Study of Diplomacy: The Management of the Diplomatic Service and Foreign Policy', *The Journal of Language, Technology & Entrepreneurship in Africa*, 2, 1, <http://www.ajol.info/index.php/jolte/article/viewFile/52001/40636>.

nominated the respected local Transparency International director John Githongo as Permanent Secretary for Governance and Ethics; all this was widely seen as proof of the new political will to reform. However, a new draft constitution prepared by Kibaki aides and close allies did little to reduce the powers of the president. The draft constitution was rejected in a referendum in November 2005. When NARC finally collapsed in 2006, and a new opposition in the form of ODM united itself behind the 'No' voters of the constitutional referendum, Kibaki however later restored ties with KANU and other former political adversaries to prepare for the 2007 elections<sup>7</sup>.

#### **2.4 Kenya Multi-Party Politics Background (1992 to 2010)**

The Kenya African National Union (KANU) won both the 1992 and 1997 General Elections. KANU was in power since Kenya's Independence in 1963 with President Jomo Kenyatta as the first President and following his death President Daniel Arap Moi from 1978. Kenya's elections following the 1992 multi party elections was characterized by ethnic clashes (especially those in the Rift Valley in 1992), serious land management problems (particularly land grabbing), and a scarcity of State resources. As a consequence, the 2002 elections were a watershed moment in Kenya's history, as the then incumbent president Daniel arap Moi could not contest the 2002 elections as he had concluded his second and constitutionally final term in the multiparty era<sup>8</sup>.

In 2002, the KANU government, having been in power since Independence, lost the elections to the newly founded National Rainbow Coalition (NARC), led by former Vice President Mwai Kibaki (1978–1988) who was at the time a key opposition figure.

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<sup>7</sup>Kenya, CIC (Commission for the Implementation of the Constitution), 'Bill Tracker', [http://www.cickenya.org/bill\\_tracker?page=1](http://www.cickenya.org/bill_tracker?page=1), accessed 24 August 2012.

<sup>8</sup> Republic of Kenya, (1998). The Constitution Revised Edition (1998) 1992, - Laws of Kenya, Government Printers, Nairobi



Mwai Kibaki, with the assistance of other influential opposition figures such as Raila Odinga and Kijana Wamalwa won 61% of the vote and NARC secured 125 out of the 210 contested parliamentary seats. KANU's presidential candidate, Uhuru Kenyatta, son of founding father Jomo Kenyatta, conceded defeat (31.2%). The country experienced the first change of government in 24 years through an election<sup>9</sup>. The country was ecstatic with hope for a more prosperous and inclusive Kenya at the time.

One of the key pillars of NARC was a Memorandum of Understanding signed by the main party leaders before the elections, in which it was agreed to conclude the constitutional reform process that started in 2001. This included reintroducing the position of Prime Minister with executive powers and limiting presidential powers. However, fractures in the coalition started to appear and a broad-based opposition against the government draft constitution developed under the umbrella of the Orange Democratic Movement (ODM), led by Raila Odinga, Kalonzo Musyoka and then opposition leader Uhuru Kenyatta. The government lost the referendum held on 21 November 2005 with 43% of the vote against 57%, resulting in President Kibaki dismissing his entire cabinet that opposed him<sup>10</sup>. The referendum was a harbinger for further splintering of the NARC coalition and the growth of an opposition that had previously been part of the ruling NARC government.

In 2007, 118 political parties fielded candidates for the general elections. The majority of these political parties were personality driven and arranged along ethnic lines.

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<sup>9</sup>Ochieng DO & DS Majanja, 'Sub-Saharan Africa and WTO Dispute Settlement: The Case of Kenya', in Shaffer GC & R Meléndez-Ortiz (eds), *Dispute Settlement at the WTO: The Developing Country Experience*. Cambridge: Cambridge University Press, 2010.

<sup>10</sup>Mwagiru M, 'The Missing Link in the Study of Diplomacy: The Management of the Diplomatic Service and Foreign Policy', *The Journal of Language, Technology & Entrepreneurship in Africa*, 2, 1, <http://www.ajol.info/index.php/jolte/article/viewFile/52001/40636>.

Political ideologies played no determining role. Manifestos played an insignificant task to the electorate. The lack of continuity in the political party structures, consolidated party membership and the ephemeral nature of political parties were coupled with strategic and tactical moves to form alliances between parties. As a result of these trends, the majority of political parties contesting the 2007 General Elections, including the parties of the major presidential candidates PNU (Mwai Kibaki), ODM (Raila Odinga) and ODM-K (Kalonzo Musyoka), were founded only shortly before the election campaign period or within the election year.

No single party gained an absolute majority of the 210 parliamentary seats. With 99 Members of Parliament, ODM was the largest parliamentary group, followed by PNU with 43. Together with the three seats of NARC and the United Democratic Movement MPs, ODM held 103 parliamentary seats. PNU together with its member and affiliate parties held 77 seats and, as ODM-K formally entered into a coalition with PNU; the additional 16 ODM-K seats meant that the PNU bloc had 93 seats in parliament<sup>11</sup>.

Mwai Kibaki, from the Party of National Unity (PNU) officially won the presidential elections with 46.4% against Raila Odinga of ODM with 44.1% and Kalonzo Musyoka of ODM-Kenya with 8.9%<sup>12</sup>. Inconsistencies and disputes in the results of the tallying process announced by the now defunct Electoral Commission of Kenya resulted in the crisis that led to opposition parties, as well as various civil society organisations and government organizations, such as the Kenya National Commission for Human Rights, rejecting the official results. This led to riots, violent demonstrations, and ethnic

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<sup>11</sup>Mwagiru M, 'The Missing Link in the Study of Diplomacy: The Management of the Diplomatic Service and Foreign Policy', *The Journal of Language, Technology & Entrepreneurship in Africa*, 2, 1.

<sup>12</sup>Wachira N & C Onyango-Obbo, 'How Kenya lost its standing in the outside world', *AfricaReview*, 31 January 2011.

clashes in several parts of the country that lasted for several weeks. Indeed, shortly after the announcement of the results, parts of Nairobi- especially low income areas- were engulfed in violence, along with several large towns in the Rift Valley (Eldoret), Nyanza (Kisumu) and Coast Province (Mombasa). From January 2007, violence occurred in sections of the Rift Valley; in particular, areas like Kericho and Eldoret then Naivasha and Nakuru. Although the worst violence affected major urban centres, rural areas were not spared. The violence had a far-reaching impact on Kenya's social, economic and political fabric. There was international concern that the violence which in some areas seemed systematic could lead to possible genocide. Kenya had always been seen as the haven for peace in a region that was politically unstable. That year, more than 1,200 people were killed and some 300,000 displaced from their homes. The worst post-election violence that Kenya had ever experienced since its independence.

Following several behind the doors negotiations to end the violence, between President Kibaki's led PNU and its affiliates and Odinga's ODM and affiliates, with the help of the international community, a Kofi Annan-led dialogue to stop the violence and the rising ethnic tension resulted in the formation of a coalition government between the PNU and the ODM. On 28 February 2008, the main parties in the dispute signed the Agreement on the Principles of Partnership of the Coalition Government. It included the establishment of a power-sharing government in which the two main candidates, President Mwai Kibaki and opposition leader Raila Odinga, agreed to serve as President and Prime Minister (the latter being a newly-created temporary post) respectively,

overseeing a distended cabinet incorporating parliamentarians from both sides of the political spectrum<sup>13</sup>.

In addition, the Justice Philip Waki Commission (in charge of the investigation on post-electoral violence and headed by a Kenyan) and the Independent Review Commissions (IREC), headed by a South African judge (Kriegler Commission) produced reports on the 2007 elections<sup>14</sup>, highlighting the different responsibilities and electoral malpractices as well as recommending institutional reforms. Following these reports, the ECK was dissolved and replaced by an interim structure, the IIEC. Kenya also made efforts aimed at promoting national cohesion among the different ethnic groups including the establishment of the National Cohesion and Integration Commission (NCIC). The Government also established the Truth, Justice and Reconciliation Commission (TJRC) to address issues related to historical injustices. Established in 2009, for an initial two years, the TJRC was required to report on its findings and propose recommendations on measures to be taken to achieve its objectives, including prosecution and/or reparations.<sup>15</sup>

## **2.5 Sequence of How Kenya got to Where it is Today Following the 2007 Post-Election Violence**

Having looked at the above background, it is important to discuss the causes of one of Kenya's darkest but perhaps most crucial events, as this influenced a lot of the statements made by both local politicians as well as foreign diplomats and governments in the run-up of the 2013 General Elections. To discuss the conflict, the use of a conflict cycle will be of immense benefit.

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<sup>13</sup>Wachira N & C Onyango-Obbo, 'How Kenya lost its standing in the outside world', *Africa Review*, 31 January 2011.

<sup>14</sup>*The Standard*, 'Two principals to blame for EACC dilemma', 21 September 2012.

<sup>15</sup>The Truth Justice and reconciliation Commission final report, 2013.

As alluded to in the background, the 2007 was a hopeful election. Civic education on electoral processes had been conducted in one of the most comprehensive manners seen in Kenya. Indeed Kenyans at the grassroots –the villages- had been prepared and made aware of not only what to do but what to expect when they cast their vote in the ballot box. However, although everyone was prepared for the election day, very few had prepared for the event of a possible run-off or on how to mitigate violence if it occurred.

## **2.6 The Years 2005 to 2007**

Just two years before the 2007 General elections, on 21 November 2005, NARC that had ousted former president Daniel Arap Moi of Kanu from his 24 year rule in 2002 in what could be metaphorically be looked upon as the second rebirth of Kenya, split into two factions in the run-up of the referendum to change the proposed 2005 constitution.<sup>16</sup> The Former ECK chair the late Samuel Kivuitu had successfully been able to lead the country through this referendum with the famous and easy to remember insignia of the Orange and the Banana.

The Orange being the symbol of those that opposed the 2005 proposed constitution and the Banana being the symbol for those that accepted the constitution.<sup>17</sup> It was at this time that a falling off between NARC leaders occurred as the president also dismissed from office ministers that had not paid homage to the then 'Government Project- the 2005 Proposed Constitution. Various issues of contention for instance the Kadhi Courts, land reforms among other issues being cited as reasons for the fallout.

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<sup>16</sup>Branch Daniel, *Kenya, between Hope and Despair*, Yale University Press, 2011; pp 268.

<sup>17</sup>Of Oranges and Bananas: The 2005 Kenya Referendum on the Constitution. The Chr. Michaelgen Institute (CMI) Bard Anders and Arne Tostensen. CMI Working paper 2006: pp13

<sup>18</sup>This led to the ‘Banana’s’ losing and the ‘Oranges’ winning with an over 50 percent margin and successfully blocking the passage of the 2005 proposed constitution.

Leaders and members of parliament who opposed the 2005 proposed constitution, led by Raila Odinga, one of the key founding members of NARC formed a splinter group that later came to be known as ODM, borrowing its name and even party symbol from the orange fruit used during the 2005 referendum. The splinter later grew in popularity with Raila Odinga and a cluster of other prominent Kenyans including at the time opposition leader, Uhuru Kenyatta taking up the slot of the official opposition.

<sup>19</sup>However, Uhuru was to later join President Kibaki in his campaign.

As the 2007 General election neared, NARC led by then President Mwai Kibaki opted to partner with other smaller parties to run against the now popular ODM. This later gave birth to PNU, a loose joining of like-minded parties which was more united than NARC was. In addition to ODM and NARC in the run-up to the 2007 General Elections, there were also other independent political parties that also presented presidential candidates and members of parliament for election in various Kenyan constituencies.

## **2.7 The Years 2007 to 2008**

As earlier noted, Kenyans at an individual level as well as at group level had been optimistic of a favorable result during the 2007 General elections, thanks to the 2002 General elections that ushered Kenya to economic and political reforms that had not been witnessed in the country for many years during the Moi era. For instance, ever since the NARC government took power in 2002 from the restrictive Moi Regime, the media space in Kenya had expanded quickly with Kenya’s media viewed as one of the most free in the

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<sup>18</sup>Lafargue Jerome, the General Elections in Kenya,2007, African Books Collective. Nairobi, IFRA, 2009 pp37.

<sup>19</sup>International Crisis Group, Kenya conflict history briefing paper, November 2008.

horn of Africa region. <sup>20</sup>Public statements, political gatherings and advertising used by the two most prominent parties, ODM and PNU employing the use of youthful theme songs. For example, ODM employed the use of the song '*unbwogable*' which in youth slang meant 'the undefeated' as well as the song '*mapambano*' which in Swahili stands for 'struggle' resonating with the youth, who formed a large voting constituency, and who were struggling with unemployment. Indeed, during the ODM party's manifesto launch in 2007, a large number of attendees were the youth. Needless to say that the PNU party, also through its various media advertising and public events employed the song "*ndomo*" swahili for unnecessary noise, which also resonated with the youth.

Indeed, a 2007 commonwealth observer report, noted that it appeared that there was a greater awareness among political parties on youth issues. <sup>21</sup>The report further noted that most political parties placed strong emphasis on issues of particular interest to the youth such as education and employment opportunities. It also went further to note that the youth constituted the majority of the voters at the time. Although at the time, the music used at campaigns and targeted to the youth was thematic and danceable, the messaging was destructive. This music subconsciously divided the youth and the country, especially those in the informal settlements, whose promise for a more economically prosperous Kenya resonated with them. The charged political campaigns and public statements and music during these events only formed strong party allegiances within the youth (for this study, the term youth stands for those between the age of 15-35 years<sup>22</sup>).

On 27 December 2007, general elections were held with Kenyans having the opportunity to vote for their preferred presidential, parliamentary and civic leaders in

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<sup>20</sup>The report of the Commonwealth Observer Group, December 27, 2007: pp 21.

<sup>21</sup>Ibid

<sup>22</sup>Government of Kenya, National Youth Policy: pp1.

what turned out to be a mostly peaceful exercise. However, it is the tallying of the votes that sparked controversy. The former ECK Chair, Samuel Kivuitu announced President Kibaki as the president according to the tally, only to later state on live television and radio, that he was not sure of who won the 2007 General elections.<sup>23</sup> The number of votes between the two were so close and there were claims from both political divide of rigging. However, before ODM could go the courts to contest the results, President Kibaki was sworn in an evening ceremony at Statehouse Nairobi on December 30 2007.<sup>24</sup>

By December 31, violence had erupted in various parts of the country as opposition supporters took to the streets to protest at the news that Kibaki had been sworn in for another term despite the irregularities in the tallying.<sup>25</sup> A stark difference to the 2002 swearing-in ceremony that was filled with optimism and euphoria. Indeed, domestic and international observers were to later confirm irregularities in the tallying as well as the announcement and swearing-in process of former President Kibaki. As unrest spread, television and radio stations were instructed by the Government to stop all live broadcasts.<sup>26</sup> Following the announcement of Kibaki as president, protests and violent ethnic clashes in various areas of the country resulted in over 1,500 people dead and hundreds of thousands displaced- a magnitude never before seen in Kenya. In addition, it could be argued that sometimes elections can also accentuate existing conflicts among opposing parties, as elections by their very nature are conflict ridden, given that they present a contest over state power.<sup>27</sup>

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<sup>23</sup>Kenya final report , General Election, 27 December, 2007, 3 April 2008, EU Election Observer Mission.

<sup>24</sup> Institutionalizing Political Parties in Kenya. Nairobi, Friedrich Ebert Stiftung, 2010: pp 17.

<sup>25</sup>Xian Rice, Kenyans riot as Kibaki declared poll winner. The Guardian, December, 31 2008.

<sup>26</sup> Attacks on the press in Kenya in 2008. The Committee to Protect Journalists, www.cpj.org

<sup>27</sup>Mwagiru Makumi, Peace and Conflict Management in Kenya. Nairobi, Catholic Justice and Peace Commission, 2003: pp119.



According to Mwangi, ODM had wanted to use mass action to galvanize the anger of its supporters while PNU believed that Mwai Kibaki had been constitutionally declared president and mass action not authorized by law and thus the use of Kenyan security agencies such as the police to quell the violence.<sup>28</sup> Additionally, the youth were used in the violence to propagate the positions of their parties.

## **2.8 The Violence Life Cycle and the 2007-2008 Post Election Violence**

The use of the violence life cycle will not be able to capture all the causes of the post-election violence witnessed in 2007 as it may have been caused by a number of underlying causes and tackling them in this paper may not be possible. However, it is worth noting that conflicts are process, a cluster of events taking time to evolve and reshape. They are always complicated as they are part of the complex lives of human beings. But there are distinct stages which conflicts have in common.<sup>29</sup> I will try to look as best as possible in general terms to the life cycle of the 2007 Post- Election Violence and in passing mention some of the actors that participated in the violence and in ending it too.

### **2.8.1 Stage One: the 2007 Post Election Violence**

The first step in the life cycle of a conflict develops during the presence of peace in the country, tensions develop in the course of daily life. If these tensions are not addressed they develop into a crisis.<sup>30</sup> For instance in 2001, six years before the post-election violence, Samuel Kivuitu, the former chair of the defunct ECK submitted a report to the Constitution of Kenya Review Commission highlighting several grey areas

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<sup>28</sup> Mwangi, Makumi, *The Water's Edge: mediation of violent electoral conflict in Kenya*. Nairobi, Wab Artistic, 2008: pp3.

<sup>29</sup> Mwangi, Makumi, *The Water's Edge: mediation of violent electoral conflict in Kenya*. Nairobi, Wab Artistic, 2008: pp5.

<sup>30</sup> Ibid

in Kenya's electoral law that he recommended should come under revision. Among these were the mode of appointment, basic qualifications, tenure for electoral commissioners and the parliamentary funding scheme. In his letter, Kivuitu noted that an elections commission, as an election management body must be competent, efficient and impartial in the execution of its electoral functions, mechanisms that were weak at the ECK at the time.<sup>31</sup> By the time the 2007 General Elections were being held none of the issues that the former ECK chair had raised had been seriously addressed or considered.

Furthermore, at that period of time another red flag that was not taken seriously was the growth of the *Mungiki* sect among the youth in the Kikuyu ethnic community and which had began recruiting members from other ethnic communities within Kenya. *Mungiki* which means multitudes in the Gikuyu language, is a gang with political and religious ties operating like the mafia and recruits young, and mostly unemployed youth.<sup>32</sup> This group is believed by the ICC office of the prosecutor to have played a significant role in the violence following the 2007 General Elections. It is worth noting that in 2002, five years before the post election violence, the Kenyan Government had outlawed the *Mungiki*. However, in 2007 when the Post-Election Violence broke out, the group was still active and operational around Nairobi and surrounding provinces. In Nairobi, media reports noted that they group run extortion rackets in the Nairobi informal settlements and some city estates, controlling the transport industry<sup>33</sup> and demanding from *matatu* (mini bus transportation) owners and landlords of rental home in low income areas of Nairobi a percentage of daily fares or protection money for property.

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<sup>31</sup>Keeler Rachael, Ghana Succeeds Where Kenya Failed. The African Executive 2009, [www.africanexecutive.com](http://www.africanexecutive.com)

<sup>32</sup>Branch Daniel, Kenya, between Hope and Despair, Yale University Press, 2011; pp 236.

<sup>33</sup>Profile:Kenya's secretive Mungiki sect, British Broadcasting Corporation. Thursday 24 May 2007. [www.bbc.co.uk](http://www.bbc.co.uk)

Indeed, the police had either refused to deal with the *Mungiki* for five years following the ban of the group or they let the matter slide, leading to severe consequences during the post election violence. Additionally, prominent Kenyans, both business and political had been named in a Kenya National Human Rights Commission report as having had or have close ties with the sect prior to 2007. Indeed, nothing, since 2002 seems to have seriously been done to contain the group, apart from occasional claims of extrajudicial killings by the police on the group.

Apart from the issues mentioned above, tensions over land, going back to the colonial and early post-colonial period may have played a part in the 1992 and 1997 post election violence as well as the 2007 elections.<sup>34</sup>

### **2.8.2 Stage Two of the 2007 Post Election Violence**

The Second stage is that once the crisis develops and nothing is done about it, it generates into violent conflict.<sup>35</sup> The possible electoral crisis due to a deficient constitution that Former ECK Chair Samuel Kivuitu had earlier in 2001 alluded<sup>36</sup> to, shockingly came to pass in 2007, when both domestic and international observers declared the elections as having serious irregularities and having been deeply flawed leading to violence. The first phase of the violence began immediately after the announcement of the contested elections results, when ODM supporters took to the streets in protest, especially in Kisumu and Nairobi's informal settlements including Mathare where this study will later focus on. The second wave consisted of alleged organized attacks in the Rift Valley which appear to have targeted non-Kalenjin Ethnic

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<sup>34</sup> Kenya National Human Rights Commission, on the brink of the precipice: a Human Rights account of Kenya's post -2007 Election violence. Pp176-238

<sup>35</sup> Mwangi, Makumi, *The Water's Edge: mediation of violent electoral conflict in Kenya*. Nairobi, Wab Artistic, 2008. Pp 5

<sup>36</sup> See 92

communities and those perceived as opponents of the opposition ODM party, including the Kikuyu, Kisii and some Luhya communities.<sup>37</sup> In retaliation, gangs of Kikuyu youths including *Mungiki* and supporters of PNU subsequently attacked non-Kikuyu groups in Nairobi, in particular in the Mathare Informal Settlements as well as in other parts of the country including Naivasha, Nakuru and other areas of the Rift Valley.<sup>38</sup>

Furthermore, the *Mungiki*, re-grouped after violence broke out in parts of the country after news of Kikuyu being targeted or being killed by other ethnic groupings introducing a negative page to the post-election violence. The *Mungiki* are believed to have participated in carrying out the killings of Kalenjin and Luo in some parts of the Rift Valley dominated by the Kikuyu as well as in some parts of *Mathare* Nairobi, second largest slum. The group also distributed leaflets warning outsiders who were not from the Kikuyu tribe to leave Kikuyu dominated areas. According to Lafargue, *Mungiki* cells that had been dormant had been reactivated in Nairobi, Central and Rift Valley province and its popularity grew.<sup>39</sup>

However, it was not only the *Mungiki* that was active during the 2007 Post-Election Violence. Youth, unaffiliated to the *Mungiki* from various areas of Nairobi, the Rift Valley and even Western Kenya, also participated in the violence, and ejection of foreign ethnic groups from areas where they were the minority was rampant, especially in Central and Rift Valley Province. In addition, although the *Mungiki* and other youth groups were some of the visible players in the conflict, some of the invisible players only came into light after the KNHCR published its report “on the brink of the precipice.”

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<sup>37</sup>See 86

<sup>38</sup>See 93

<sup>39</sup>Lafargue Jerome, the general elections in Kenya 2007, African Books Collective. Nairobi, IFRA, 2009.

<sup>40</sup>The report named prominent members of parliament, businessmen and even clergy as having facilitated or provided funding for youth to fan the violence. Indeed, noting this untapped youth power by the various party leaders, Peter Kagwanja once noted that African Youth with their limited resources are easily manipulated by their elders. Further unemployed and restless youth are usually easily enticed to join a violent movement in the hopes earning money and improving their economic livelihood. <sup>41</sup>

Furthermore, the KNHCR report also looks into the issues of land having contributed to the spate of violence witnessed in December 2007. The report further stated that the events of the December 2007 elections and the post-election violence had much continuity with Kenya's recent past. Indeed, broad national level socio-political and economic dynamics as well as the localized state society and community contexts interacted to generate conditions leading to conflict of land that was tied to historical injustices and land grievances<sup>42</sup>. This propagates the idea that every conflict as the KNHCR report proves has a memory<sup>43</sup>. In this case the pre-colonial and post colonial unfair division of land among Kenyans that saw displacement communities from their ancestral land and the introduction of foreigners be it the 'white man' or members of another ethnic community without the sole consent of the original owners/ethnic community. This may have led to the bubbling rage witnessed in parts of Kenya at the time.

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<sup>40</sup> Kenya National Human Rights Commission, on the brink of the precipice: a Human Rights account of Kenya's post -2007 Election violence. Pp176-238

<sup>41</sup>Kagwanja Peter, Power to Uhuru, Youth identity and Generational Politics in Kenya. African Affairs, London: Oxford University Press, 2005. Pp 51-75

<sup>42</sup>See 101

<sup>43</sup>Mwagiru, Makumi, The Water's Edge: mediation of violent electoral conflict in Kenya. Nairobi, Wab Artistic, 2008.pp 10

### **2.8.3 Stage Three of the 2007 Post-Election Violence**

Finally, the third stage of the cycle that may have led to the 2007 post-election violence is that once violent conflict has developed, it must be addressed through various methods of conflict management.<sup>44</sup> In Kenya's case, following the 2007 post –election conflict, it was mediation as witnessed by the AU led initiative. As the crisis progressed in late December, it received a lot of coverage in the Foreign Media, drawing great attention to Kenya, which was believed to be the largest economy in the Horn of Africa as well as a safe haven for hundreds of thousands of refugees in the region.<sup>45</sup> What followed included visits to the country by the then Chairperson of the AU, John Kufuor, Archbishop Desmond Tutu of South Africa, and the Forum of Former African Heads of State and Government led by former Mozambican President Joachim Chissano. However, they were not successful in ending the violence as a mediator must be accepted by both disagreeing parties, in this case ODM and PNU, with PNU not recognizing their roles in trying to mediate. The AU then mandated a Panel of Eminent African Personalities, chaired by former UN Secretary General Koffi Annan with the assistance of former Tanzanian President Benjamin Mkapa as well as respected African leader Graca Machel to find a peaceful resolution to the crisis.<sup>46</sup> This team was accepted by both PNU and ODM.

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<sup>44</sup> Mwagiru, Makumi, *The Water's Edge: mediation of violent electoral conflict in Kenya*. Nairobi, Wab Artistic, 2008.pp 5

<sup>45</sup>Media Coverage of the 2007 Post-Election Violence in Kenya. African Woman and Child Feature Service, January 2009.

<sup>46</sup>The Koffi Annan Foundation, *Kenya National Dialogue and Reconciliation: one year later*. [www.koffiannanfoundation.org](http://www.koffiannanfoundation.org)

## 2.8.4 Mediation for Peace

On 29 January 2008, one week after the Panel of Eminent African Personalities' arrival in Nairobi, the KNDR was formed in a meeting between the Panel and President Mwai Kibaki, PNU leader and Raila Odinga, ODM party leader. Representatives of the two parties were selected and talks began. Two days after the formation of the KNDR, the agenda for the talks was agreed and the parties completed the first two Agenda items which included 'immediate Action to Stop Violence and Restore Fundamental Rights and Liberties and Measures to address the Humanitarian Crisis, Promote Reconciliation, Healing and Restoration of Stability'. In most of February 2008, the talks focused exclusively on how to resolve the political crisis, what was popularly referred to 'Agenda three'.<sup>47</sup> By the end of the month, on 28 February 2008, a power-sharing agreement was reached pursuant to which a Coalition Government comprising the PNU and ODM was established bringing to an agreed end to the conflict.<sup>48</sup> However, the talks did not end there and the fourth and most important Agenda, was to try and look at long term issues and solution as a way of avoiding a repeat of the violence.

Further, during mediation, ODM and PNU also agreed to establish three important commissions which to date have all presented their reports. The three were the; Independent Review Commission on the 2007 Post –election Violence, the Commission of Inquiry into the Post-election violence and the Truth, Justice and Reconciliation Commission.<sup>49</sup> The latter having faced leadership hurdles as well as delays in the release

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<sup>47</sup> The Kenya National Dialogue and Reconciliation Monitoring Project, Context and Summary of findings. January 2009. PP1

<sup>48</sup>See 107

<sup>49</sup>See 108

of the report while the report from the Commission of Inquiry into the Post-election violence playing a critical role in the beginning of the Kenya ICC cases.<sup>50</sup>

ODM and PNU further agreed to pursue comprehensive constitutional review process, which in 2010 saw the passing and adoption of a new constitution through a referendum that saw two thirds of Kenyan voters endorse it.<sup>51</sup> At the conclusion of the mediation phase in July 2008, the KNDR stressed the need to ensure the continued role of the Panel and thus the continued pressure and visits to Kenya by the chair of the Panel, Koffi Annan. However, by 2012 public opinion polls indicated that his influence had dramatically dropped. In addition, with the dissolution of the coalition government following the 2013 General Elections his role was no longer useful.

Indeed, although the KNDR was able to provide temporary relieve to the 2007 Post –Election Violence, it seems to have provided a bandage to a wound that needed radical operation instead. In other words, the KNDR in my opinion never dealt conclusively with the history and the memory of the conflict. For instance, one of the commissions, the TJRC, that should have played an active role in reconciliation as the that of the Truth and Reconciliation Commission of South Africa<sup>52</sup> was plagued with leadership wrangles as well as the final report was downplayed to the extent that Parliament wanted to make amendments to the report. The TJRC was expected to investigate the gross human rights violations and other historical injustices in Kenya between 12 December 1963 and 28 February 2008<sup>53</sup>. The commission was meant to help

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<sup>50</sup>ICC Press Release, Kenya's Post Election Violence: ICC Prosecutor presents cases against six individuals for crimes against humanity. December 15 2010.

<sup>51</sup> Kenya President Ratifies New Constitution, The British Broadcasting Corporation, 27 August 2010. [www.bbc.co.uk](http://www.bbc.co.uk)

<sup>52</sup> The Official South Africa Truth and Reconciliation Commission. [www.justice.gov.za/trc/](http://www.justice.gov.za/trc/)

<sup>53</sup> The Kenya National Dialogue and Reconciliation. TJRC



in the healing and reconciliation process for Kenya- this is yet to be achieved. Indeed in South Africa, their commission was a necessary exercise to enable South Africans to come to terms with their past on a morally accepted basis and to advance the cause of reconciliation.<sup>54</sup> This should have been what the TJRC should have achieved here in Kenya.

In addition, the KNDR had identified land as a key problem that required long term solutions. To date both the coalition government (2008-2013) and the Jubilee Government (2013-to date) are facing challenges in the enactment of land reforms envisaged in the new constitution. Indeed, in the run-up to the 2013 general elections, land reforms formed a big part of the debate and is still an issue of national importance.

Furthermore, although both the coalition government and the Jubilee governments have initiated programmes dealing with the youth such as *Kazi kwa vijana* (coalition government) and the *Uwezo* fund (Jubilee Government), the unemployment rate among the youth still remains high. However there are some positive attributes to the KNDR mediation process. Key among this, is the passing and the adoption of the constitution in 2010.<sup>55</sup> Indeed the promulgation of the constitution was seen as a new dawn for Kenya marking a paradigm shift in the country, in particular as the constitution contains a progressive bill of rights and articles that ensure accountability by leaders as well as the removal of excessive powers from the executive.

## **2.9 How Kenya got to the ICC vs International Law**

Although this paper largely looks at the influence of public statements on Kenya's election, looking closely at the 2013 General Elections, the ICC cases played a large role

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<sup>54</sup>See 113

<sup>55</sup> Towards the Next General Elections in Kenya: Status of reforms and evolving scenarios. South Consulting 2011.

in the Elections as well as the statements that were released during this period, however it may be paramount to discuss how the relationship between Kenya and the ICC developed.

Kenya, agreed to sign onto the Rome Statute in 1999 and later ratified it in 2005.

<sup>56</sup>By this act Kenya, was agreeing to be bound by the rules and regulations of the Rome Statute and international law. Indeed, the whole principle of good faith forms a vital basis to the survival of international law. Without good faith states would not be able to trust each other or even work together. <sup>57</sup>That is why in my opinion, apart from justice for the victims of the 2007 post election violence, the Kenya cases have received so much attention by the international community as well as international media.

The principle of good faith is important so much so, because in international law, there lacks an enforcement agency such as that found nationally through the police force. Therefore the expressed will of a country becomes paramount. <sup>58</sup>For Kenya, having signed the treaty, it meant that Kenya had seriously committed itself to the Rome Statute and agreed to adhere to its rules no matter the events or issues. In other words, Kenya had in principle accepted to face the consequences if it violated any of the rules or principles of the Rome Statute.

The act by Kenya, first in 1999 in signing and in 2005 by ratifying the Rome Statute<sup>59</sup>, according to the 1969 Vienna Convention on the law of treaties (article 2b), <sup>60</sup>Kenya agreed to be bound to the statute. The signing and ratifying of the Statute by

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<sup>56</sup> Clock ticks for Ocampo six. Capital Fm, April 6 2011. [www.capitalfm.co.ke/.../Clock-ticks-for-the-Ocampo-Six-12322.html](http://www.capitalfm.co.ke/.../Clock-ticks-for-the-Ocampo-Six-12322.html)

<sup>57</sup> Dixon Martin, International Law. Oxford University Press, London,2007. Pp233

<sup>58</sup>ibid

<sup>59</sup>ICC Signatory and Ratification Status (as of December 11,2006).

<sup>60</sup> Vienna Conventions on the Law of Treaties 1969.

Kenya is further guided in the Vienna convention under article 11,<sup>61</sup> which notes that the consent of a state to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means agreed upon. However, in Kenya, perhaps due to the lack of the word treaty on the Rome Statute, it has not been taken seriously by the public and politicians alike and there has been discussion of the country easily pulling out due to various demands that the court has placed on the government as well as the accused.

Indeed, the Government of Canada which is one the court's largest supporters has noted that Rome Statute is an international treaty which, among other things, requires States to surrender indictees to the court and collect and even demand for the collection of evidence and assets.<sup>62</sup> Indeed, Kenya is facing the pressure of this requirement, and even more so, with the complexities of having its president and deputy president as main suspects in the case before the court. Undeniably as was noted by Kenya's campaign during the 2013 AU summits as well as the 2013 ASP meetings, Kenya is realizing that it is bound to the treaty (Rome Statute) and it is proving difficult to withdraw from.

Dixon Martin, an international law scholar, has noted that the binding principles of the conventions on the law of treaties argues that before a treaty can create legally binding obligations to a state, two criteria must be met. The first criteria, he gives is that the state must have given its consent to be bound, which Kenya did as noted earlier through ratification and secondly the treaty must have entered into force which Kenya allowed by domesticating the Rome Statute through the Kenyan International Crimes Act 2008.

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<sup>61</sup>Ibid.

<sup>62</sup>Department of Foreign Affairs, International Trade and Development Canada. [www.international.gc.ca](http://www.international.gc.ca)

Indeed, through this acts, the Vienna convention on treaties deals qu comprehensively with the scope of the legal obligations that a state accepts when expresses its consent to be bound by a treaty especially once that treaty has entered in force. However, Article 26 of the convention notes that every treaty in force is bound good faith and that states will adhere to it. Irene Kull notes that concept of good faith also known as *pacta sunt servanda* means that treaties are binding on any conditions good faith and without which it would be impossible to operate a system of treaty law.

Looking at the Kenya cases, the government seems to be very aware of th principle. Ever since parliamentarians and even the government began threatening withdraw from the Rome Statute, Kenya has never abdicated its obligations, it may ha irritated, the ICC through consistent delays in processing of requests, but never has t country pulled out. However, this does not mean that Kenya or the Rome Statute does n provide mechanisms for withdrawal. Article 127 (1) of the Rome Statute notes that state party such as Kenya may by written notification addressed to the Secretary Gene of the UN withdraw from the Statute. However cases that are already ongoing would n be affected by the withdrawal and in the case of Kenya, <sup>63</sup>it means that a withdraw would only be futile as the two Kenyan cases would go on regardless.

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<sup>63</sup> See 120

## CHAPTER THREE

### AN EVALUATION OF KENYA'S MARCH 4 2013 GENERAL ELECTIONS

#### 3.1 Introduction

This chapter presents analysis and findings of the study as set out critical analyze the Kenya's march 4 2013 general elections.

Following elections in early March 2013 and the Jubilee Coalition's rise to power, both Kenyans and the international community have reasons to expect changes in the country's policies, especially foreign policy. Following the elections in March 2013, Western states were silent on how they will work with the new Kenyan government to be headed by then President-elect Uhuru Kenyatta after the announcement by the IEBC declaring Mr. Kenyatta President even as the Chinese congratulated the then President-Elect Uhuru Kenyatta<sup>1</sup>. Even though the UK, the U.S, Canada and the EU in separate messages, praised Kenyans for holding peaceful elections, they avoided naming Mr. Kenyatta and only offered blanket congratulations to all those elected. <sup>2</sup>From the West's perspective, a Kenyatta victory presented a challenge, a quagmire of sorts, as many of them have policies that hold spirit to human rights, respect of rule of law as well as respect of international obligations. In addition, many of them apart from the U.S were signatories to the Rome Statute. Turning a blind eye on Mr. Kenyatta would mean setting precedence on other world leaders facing accusations or trial for human rights violations during conflict. A case in mind is President Al-Bashir of Sudan who, also a

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<sup>1</sup>AFP, China congratulates Kenyatta over election win. Capital Fm, March 11 2013. <http://www.capitalfm.co.ke/news/2013/03/china-congratulates-kenyatta-over-election-win/>

<sup>2</sup>Daily Nation, Kenya Election Reactions: West cautious while China, Africa positive. Africa Review, March 10 2013. <http://www.africareview.com/News/Kenya-poll-reaction/-/979180/1716418/-/w3439o/-/index.html>

sitting president as is President Kenyatta, is facing charges before the ICC. <sup>3</sup>U.S. Assistant Secretary of State for African Affairs Johnnie Carson before the March 2013 Kenyan General Elections in a televised statement warned the Kenyan electorate that “choices have consequences,” <sup>4</sup>although partially unintended it was popularly seen as a recommendation that the electorate should pick Mr. Odinga, who was the strongest opponent to Mr. Kenyatta. In early 2013, the UK through its High Commissioner in a televised interview on Citizen TV also warned that it would keep only essential and official contact with Mr. Kenyatta should he be elected president<sup>5</sup>.

However, it is yet to be seen whether the Kenyatta government will make major policy shifts in its Foreign Policy and relations with the west. This position is reinforced by the perception that although the new leadership is young and a lot of the cabinet new, its leadership represents the old order. Both President Kenyatta and his deputy Mr. Ruto having been members of KANU and the Moi Government as well as both having served in the coalition government (2007-2012) headed by the two Principals, former President Mwai Kibaki and former Prime Minister, Raila Odinga. In addition, the new leadership has come to office with a major predicament: both the President and his deputy are facing trial at the ICC <sup>6</sup>as well as Kenya’s commitments to its international obligations including to the Rome Statute. Indeed, there are signs already that the ICC cases are already influencing the direction of the Jubilee Government’s foreign policy albeit indirectly.

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<sup>3</sup> ICC Press Release, ICC - ICC Prosecutor presents case against Sudanese President, Hassan Ahmad AL BASHIR, for genocide, crimes against humanity and war crimes in Darfur. ICC, ICC-OTP-20080714-PR341, July 12 2010.

<sup>4</sup>Daily Nation, ‘Choices have consequences’ US tells Kenyan Voters. Daily Nation February 7 2013. <http://elections.nation.co.ke/news/-/1631868/1687566/-/p86h8fz/-/index.html>

<sup>5</sup>Citizen TV, ‘EU will not deal with ICC Suspects. Citizen Tv, February 6 2013 <http://www.youtube.com/watch?v=Bxopcw8dK2E>

<sup>6</sup> Jammah Ali, ‘Uhuru and Ruto battle ICC, Standard February 12 2014 <http://www.standardmedia.co.ke/?articleID=2000104534>

This is further enhanced by Kenya's shuttle diplomacy across Africa by senior staff in the Ministry of Foreign Affairs and International Trade in 2013 <sup>7</sup>in relation to garnering Kenyan support in regards to the ICC cases in regional bodies such as the AU and the EAC as well as international bodies such as the Assembly of State Parties of the Rome Statute. More importantly, analysts see events that have occurred since the Jubilee Coalition's assumption of power as geared towards the unveiling of already strong relationships but more towards galvanizing reluctance to accountable governance and democratization in Africa- all veiled under a Pan-African theme, which by itself is positive but has been taken advantage as a method of seeking a deferral on the cases before the ICC. Prior to their elections, President Uhuru Kenyatta and his deputy embarked on regional visits across the East African region<sup>8</sup>. The visits were aimed at fighting the perception that the pair was unacceptable internationally. It worked. Their charisma and youthfulness as well as their well -thought out Pan-African policies through their manifesto was accepted by many an African President especially at a time when the AU was celebrating its Anniversary. In addition, in Kenya particularly among the youth and their ethnic communities who were largely infuriated by the 'West's' interference in their choice of leaders, their acceptance by other African Presidents seen as emerging Pan-Africanists, such as Uganda's President Yoweri Museveni could have partly contributed to the ethnic voting that was seen in March 2013.<sup>9</sup>

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<sup>7</sup>The People, Shuttle diplomacy over ICC cases keeps officials busy. The People, December 28 2013. <http://www.thepeople.co.ke/43306/shuttle-diplomacy-icc-cases-keeps-officials-busy/>

<sup>8</sup> Capital Fm, 'Uhuru meets South Sudan Leader'. Capital FM, November 12 2012. <http://www.capitalfm.co.ke/news/2012/11/uhuru-meets-south-sudan-leader/>

<sup>9</sup> Bernard Williams, In *the Beginning Was The Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005), pp. 1-3.

Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), p. 2.

In an opinion piece for *The East African*, commentator Peter Kagwanja observed that the newly inaugurated government of Uhuru Kenyatta is recalibrating Kenya's foreign policy to reflect an assertive new Africa-centered approach as the central plank of Nairobi's regional and global policy. <sup>10</sup>Certainly, Kenya's new "look inwards Africa" policy as opposed to the traditional "look West" policy, or the emerging "look east policy" now in vogue, is in line with the Uhuru-Ruto campaign's frequent assertions that Western powers wanted to use the ICC to effect regime change during the recent presidential election on 4 March 2013. Indeed, this was to play out again close to five months after their inauguration, when a senior Kenyan Government official and member of the Kenyan National Security Advisory Council accused USAID for plotting to destabilize the Jubilee Government. In a statement directed at the US government and dated 12 February 2014<sup>11</sup>, Francis Kimemia, Chairman National Security Advisory Council and Secretary to the Cabinet, noted that the consistent plans to destabilize the Jubilee Government would not be tolerated at any costs, especially where civil society (activists) were funded to tarnish the country's and Leaders' reputation regionally and internationally. Rhetoric, which had been propagated, prior to the 2013 General Elections.

These assertions led pundits as the inauguration in 2013 came closer to predict that Uhuru Kenyatta's administration would likely once in power re-emphasise, Kenya's

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<sup>10</sup>Kagwanja Peter, *Inside Kenyatta's emerging, assertive policy in East Africa*. *The East African*, April 13 2013 <http://www.theeastafrican.co.ke/OpEd/comment/Inside-Uhuru-Kenyatta-assertive-foreign-policy-in-East-Africa/-/434750/1747338/-/huljnn/-/index.html>

<sup>11</sup>Kimemia Francis, National Security Advisory Committee Full Statement on plans to destabilize government, February 12, 2012. [http://www.standardmedia.co.ke/mobile/?articleID=2000104580&story\\_title=national-security-advisory-committee-statement-on-plans-to-destabilize-government](http://www.standardmedia.co.ke/mobile/?articleID=2000104580&story_title=national-security-advisory-committee-statement-on-plans-to-destabilize-government)



relationship with the East African region as well as grow its relationship with the new economic powerhouses, mainly BRICS states.

Indeed, in August 2013, a statement from the President's communication secretary prior to President Kenyatta's visit to Russia and China reaffirmed this. The statement noted that the visits to Russia and China by the president were important to Kenya in the context of the policy to look "East", by which President Kenyatta intends to focus on opening new markets or deepening existing relations in the traditional Indian Ocean Rim, as well as other countries such as Australia and Singapore, and the emerging constituency of powers from the BRICS.<sup>12</sup>

In addition to this, there has been a clear signal from the Kenyatta Government to search for an economic foreign policy orientation that is anchored in sub-regionalism and pan-Africanism, with Kenyatta's government pledging to strengthen its ties with EAC member states Uganda, Tanzania, Rwanda and Burundi as well as South Sudan, Ethiopia and Somalia, which are likely to become EAC members in the future. In fact, Kenya recently took chairmanship of the EAC a year earlier,<sup>13</sup> which observers see as a way of Kenya growing its influence politically and economically in the region. In addition to this, as a way for the justification of President Kenyatta not attending his trial at the Hague come 2014 due to his responsibilities not only as Head of State for Kenya but also as the chair of the East African Community-an extremely important body in regards to regional security.

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<sup>12</sup> State House, August 14 2013, Statement by the communications Secretary <http://www.statehousekenya.go.ke/>

<sup>13</sup>Ssesika Edward, Why Kenya has taken EAC Chair. The Observer, 28 November 2011. [http://www.observer.ug/index.php?option=com\\_content&task=view&id=28874&Itemid=116](http://www.observer.ug/index.php?option=com_content&task=view&id=28874&Itemid=116)

Indeed, reducing western influence known to push for values such as human rights, respect for the rule of law and in recent times reminding Kenya on its obligations to the Rome Statute. However, the underlying push for more African engagement as has been seen in the past year by the frequent visits to regional and international bodies such as the AU, EAC, UN and meetings with the ASP, indicates otherwise. Kenya's foreign policy over the first nine months of the Kenyatta government has been largely focused on ICC and the deferral of the trial of the President.

### **3.2 2010 New Constitution**

One of the main responsibilities of the coalition government was to spearhead fundamental reforms identified under the Kenya National Dialogue and Reconciliation (KNDR) process and in particular Agenda Four priorities. Key among these reforms was the enactment of a new Constitution.<sup>14</sup> Thus, Kenyans approved a new constitution by a two-to-one margin on 4 August 2010 referendum organised in a free and fair manner by the Interim Independent Election Commission (IIEC) with a majority 68.6% of voters accepting<sup>15</sup>. There were very few incidents of violence or unrest (including in the Rift Valley). The co-operation shown by the two main parties President Kibaki's PNU and the ODM led by Prime Minister Odinga in supporting the new constitution (despite dissenting voices on both sides), lies in stark contrast to the partisan in-fighting that had

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<sup>14</sup> Koffi Annan Foundation, The Dialogue Team of the Kenya National Dialogue and Reconciliation (KNDR) holds tenth review meeting. Koffi Annan Foundation 12 October 2011 <http://kofiannanfoundation.org/newsroom/press/2011/10/dialogue-team-kenya-national-dialogue-and-reconciliation-kndr-holds-tenth-0>

<sup>15</sup> Gilbao, Eytan. *Media and conflict: framing issues, making policy, shaping opinion*. Transitiona publisher, 2013: New York.

marked the Grand Coalition's tenure. Voters in seven out of eight Kenyan provinces endorsed the Constitution<sup>16</sup>.

Key elements of the new Constitution include: the retention of a presidential system, but with new control measures, including parliamentary oversight of presidential appointments and provisions for the impeachment of the president; devolution of power to 47 new counties and the creation of an upper house of Parliament (Senate) to oversee county-level affairs. The role of the new Senate will be to represent counties, make laws concerning counties, determine the allocation of national revenue among counties. In addition there is now a limit of 24 members on the size of the cabinet and the prohibition of ministers being members of parliament (and vice versa); increase of the size of the National Assembly, from 222 seats to 350<sup>17</sup>; The establishment of an independent Supreme Court, which has been clad with the jurisdiction to determine the validity of presidential election, and a new judicial services commission, plus vetting of new and existing judges and the adoption of a Bill of rights; The creation of an independent lands commission, a new anti-corruption agency, a salaries and remuneration commission, a new independent electoral and boundaries commission and a human rights and equality commission; The erosion of the discretionary power of the Treasury via the creation of a new revenue-allocation commission and a budget controller's office<sup>18</sup>.

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<sup>16</sup> Mutunga W, 'Kenya's Constitutional Transition: The Challenge of University, State, Society Relations', public lecture delivered at University of Nairobi, 21 August 2012 as part of Judicial Marches week.

<sup>17</sup> *The Standard*, 'Two principals to blame for EACC dilemma', 21 September 2012.

<sup>18</sup> Republic of Kenya, (2010). Vision 2030. First Medium Term Plan (2008-2012): Kenya Vision 2030. Government of the republic of Kenya, Nairobi.

### 3.3 Kenyan Elections: A Sense of Cautious Optimism

Two weeks after Kenyans took to the polls to elect their new president on March 4th, 2013, International Peace Institute (IPI) hosted a policy forum that assessed the outcome of the elections in Kenya. Panelists considered the mechanisms of the electoral process, the 2010 Kenyan constitution, and the implications of the International Criminal Court (ICC)<sup>19</sup> indictment of Uhuru Kenyatta, who won the majority vote<sup>20</sup>. With so much uncertainty following the disputed 2007 elections, which entailed widespread violence, the 2013 elections were seen as relatively peaceful. Nonetheless, challenges remained and the outcome of the elections would set the tone for Kenya's internal security and international standing<sup>21</sup>.

*Dr. Ozonnia Ojielo*<sup>22</sup>, Coordinator for Conflict Prevention and Recovery at the Bureau for Crisis at the United Nations Development Programme (UNDP), discussed the violence prevention mechanisms that were put in place before the elections. In February 2013, he had visited Kenya for two weeks, on an invitation by the government, to look at the preparations and provide advice to the national authority. From his perspective, at the local, grassroots level, there was greater engagement in violence prevention among civil society and community groups. However, at the national level, he explained that there were no mechanisms in engagement in a higher context, among the political actors, and this presented also a gap in the 2007 elections. Despite the gap, however, the election

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<sup>19</sup> Opanga K, 'Ruto may soon learn The Hague is no movie', *Daily Nation*, 6 August 2011, <http://www.nation.co.ke/oped/Opinion/Ruto+may+soon+learn+The+Hague+is+no+movie+/-/440808/1214576/-/item/0/-/lfrmwihz/-/index.html>.

<sup>20</sup> ICC (International Criminal Court), '*Tentative Court Calendar 2011*', <http://www.icc.cpi.int/NR/>

<sup>21</sup> Njiraini J, 'ICC process hurts Kenya's credit rating', *The Standard*, 11 April 2011, <http://www.standardmedia.co.ke/InsidePage.php?id=2000033055&cid=457&.126> Opanga K, *op. cit.*

<sup>22</sup> Dr. Ozonnia Ojielo is an economist with the Kenya School of Monetary Studies, This article was written in collaboration with Dr. Moses Sichei currently serving as the Director of Research at the Commission for Revenue Allocation (CRA) and Chris Milner a Professor of International Economics at the University of Nottingham.

process in 2013 was still an improvement from 2007. Dr Ozonnia noted that there has been a lot of time and resources committed to building the capacity of the electoral commission. Although with 33,000 polling stations, thousands of polling officers and six elections in one day,<sup>23</sup> it was a logistical challenge to the 2013 general elections. With enhanced security arrangements and reforms in the judiciary that enacted regulations and designated special courts for election disputes, there was however greater confidence among Kenyans in the electoral process than in 2007. Reflecting on the lessons learned from the past elections, it would have been important for national capacities for conflict prevention and management. Within the country, there was a growing distrust of external mediation and intervention, especially as two of the major political players faced trial at the ICC so it was important that the election process was led by Kenyans themselves<sup>24</sup>.

### **3.4 The International Criminal Court**

Prior to the disputed December 2007 general elections, pre and post election violence has featured in Kenya's politics since the introduction of a multiparty system in 1991. Yet, the number of people killed and displaced following the 2007 General Election was unprecedented. Indeed, it was an irony as Kenya had been viewed as a safe haven in a conflict ridden region. In addition, Kenya had played host in the past to numerous peace negotiations and conferences from Sudan and Somalia to the Great Lakes. Perhaps why opinion polls following the Post-Election violence showed a high favoritism by Kenyans to the ICC process as one that would be neutral and fair and that would help Kenyans in their process of healing and justice.

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<sup>23</sup>International Foundation of Electoral systems, *Elections in Kenya: IFES President and CEO Diary*, March 3, 2013.

<sup>24</sup>CIA (Central Intelligence Agency), 'Kenya', in *The World Factbook*. Washington: CIA, 2011. <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>.

To provide justice to the victims, combat pervasive political impunity and deter future violence, the ICC brought two cases against six suspects who allegedly bore the greatest responsibility for the post-election violence. These cases had an enormous political bearing for both the 2013 general elections and the country's stability both politically as well as economically. Even in post-election 2013, ICC rulings and court procedures will inevitably either lower or increase ethnic tensions in the country. If the ICC process is to contribute to the deterrence of future political violence in Kenya, the court and its associates must explain its work and limitations better to the public and manage expectations of Kenyans tactfully. Furthermore, Kenya's government must complement that ICC process with a national process aimed at countering impunity and leading to national reconciliation and healing.

#### **3.4.1 Impact of the ICC Proceedings**

Since the reintroduction of multiparty party politics in Kenya in the mid 1990s, politicians have been understood to have coordinated violence in subsequent elections including the 2007 general elections in attempts to prevent supporters of their competitors from voting, as well as to intimidate their opponents. Following the 2007 post election violence and indeed political crisis, a Commission of Inquiry into Post-Election Violence, was established to investigate the facts and circumstances of the election violence.<sup>25</sup> Among its major recommendations was creation of a Kenyan special tribunal to try the accused organizers of the post-election violence. The report also recommended that if the government failed to establish the tribunal, the Panel of Eminent African Personalities under the leadership of chief mediator of the 2007 post election violence

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<sup>25</sup>Government of Kenya, Commission of Inquiry into the Post Election Violence final report, 16 October 2008

Kofi Annan should hand over a sealed envelope containing the names of those who allegedly bore the greatest responsibility for the post election violence to the ICC for investigation and prosecution. President Mwai Kibaki and Prime Minister Raila Odinga signed an agreement for implementation of CIPEV's recommendations on 16 December 2008, and parliament adopted its report on 27 January 2009.<sup>26</sup>

A bill to establish a special tribunal was introduced twice in parliament but on both occasions failed to pass. Indeed, on February 12, 2009, Parliament rejected the Constitution of Kenya (Amendment) Bill 2009 and statutes for establishment of a special tribunal for Kenya. The bill presented by Justice and Constitutional Minister, Martha Karua with the strong support of President Mwai Kibaki and Prime Minister Raila Odinga was however, rejected by 101 – 93 votes<sup>27</sup> with 145 votes or two thirds of the 222 parliamentarians required for the constitutional amendments. This was also the period the slogan used by parliamentarians “*Don't be Vague, ask for Hague*” was coined. Earlier, the President and the Prime Minister, had argued that only a local tribunal could effectively deal with the suspects of the post-election violence. However, civil society organizations have noted that the President and Prime Minister may have made little effort to marshal support for the bill and to impress upon parliamentarians from their respective parties in which they were leaders their collective responsibility to establish the local tribunal as a means to provide accountability.<sup>28</sup> In addition, CIPEV had recommended a deadline of January 30, 2009 to pass the Constitution of Kenya

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<sup>26</sup>Corell Hans, Legal Advisor to the African Union Panel of Eminent African Personalities: Note on Handover of CIPEV Materials to the Prosecutor of the ICC, 29 July 2009.

<sup>27</sup> Statehouse, Parliament rejects a local Special Tribunal, 12 February 2009, <http://statehousekenya.go.ke/news/feb09/2009120201.htm>

<sup>28</sup> Human Rights Watch Paper, Establishing a Special Tribunal for Kenya and the Role of the International Criminal Court, March 25 2009.

(Amendment) Bill 2009 but on February 24, 2009 Annan granted the Kenyan Government more time to re-introduce the bill after parliament failed to pass the bill. Despite calls by the Catholic Church, civil society and the US and EU to form a local Tribunal, parliament did not pass the bill. It has been argued that parliamentarians may have had the false assumption that international prosecution would have taken a long time<sup>29</sup> as was the case with the Rwanda trials that were brought to the ICTR. Indeed, on July 14, 2009 the Kenyan Cabinet failed to agree on Justice and Constitution minister Mutula Kilonzo's (Martha Karua had been replaced as Justice Minister) draft Bills- the Constitution of Kenya Amendment Bill and the special Tribunal for Kenya Bill on local tribunal. In November 11 2009<sup>30</sup>, Parliament also failed to debate the bills due to lack of quorum. The Bill, tabled by Imenti Central MP Gitobu Imanyara, sought to establish a tribunal to try the masterminds of the 2007 post-election violence. This led as per agreement, Annan to pass the sealed envelope and the evidence gathered by CIPEV to the then ICC chief prosecutor, Luis Moreno-Ocampo, on 9 July 2009. Four months later, on 5 November 2009, the ICC prosecutor announced he intended to request authorization to proceed with an investigation to determine who bore greatest responsibility for crimes committed during the 2007-2008 post-election violence.

When the ICC Chief Prosecutor announced, on 15 December 2010<sup>31</sup>, the names of the six suspects, many of the parliamentarians including William Ruto who had opposed the tribunal bill accused the court of selective justice. To many Kenyans at the time, a

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<sup>29</sup> Omeje and Hepner, *Conflict and Peacebuilding in the African Great Lakes Region*. pp.130-131

<sup>30</sup> Rugene Njeri, Kenyan MPs snub bill to form local tribunal, *Daily Nation*, 11 November 2009

<sup>31</sup> The international Criminal Court, " video of the ICC Prosecutor's press conference on Kenya on 15 December 2010", [http://www.iccpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/press%20releases/Pages/ma84.aspx](http://www.iccpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/press%20releases/Pages/ma84.aspx)



opinion polls portrayed, the ICC's involvement was positive, as it sent a strong signal that indicated that entrenched impunity for wealthy and powerful politicians would not be permitted to endure. If national courts are unable or unwilling to prosecute perpetrators of gross electoral violence, then the international court could. For a political class used to impunity, the involvement of the ICC was game changer on how politics was conducted in the country. Kenyan politics would no longer be an internal matter but would be watched carefully by the international community.

Indeed, the 2013 presidential and legislative elections played out against a past backdrop of a significant ICC role. In fact the ICC became the proverbial 'elephant in the room' prior to the 2013 general elections. Most of the politicians preferring not to talk about the 2007-2008 Post Election Violence as concerns reconciliation and justice for the victims but rather using it as a means of gathering votes by making it an ethnic issue arguing that the cases before the Court were used by the ICC to target certain ethnic communities from gaining political power.

In addition, other factors also came into play. The outgoing president, Mwai Kibaki, would not run as the constitution barred him from doing so,<sup>32</sup> opening up the political arena to new and youthful politicians. Furthermore, the constitution promulgated on 27 August 2010 had created powerful new positions, including that of an independent judiciary led by an autonomous chief justice that raised the bar for presidential aspirants and plans for impunity. In addition, according to the constitution, a successful candidate would have to obtain an absolute majority of votes as well as more than a quarter of the

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<sup>32</sup>The Constitution of Kenya 2010 article 136

votes in at least 24 of the 47 counties<sup>33</sup>. This led to Political party agreements and alliances all in the hope of getting the largest share of the electorate.

The two most prominent ICC suspects, Uhuru Kenyatta and William Ruto, explored the possibility of uniting behind one candidate. The two unlikely associates, in particular following the 2007/2008 Post-election violence, where the Kalenjin, Ruto's Ethnic Community and the Kikuyu, Kenyatta's ethnic community fought following the disputed 2007 General Elections now faced a common foe- the ICC, that threatened their freedom not only locally but internationally. The Court's cases seem to have cemented their friendship raising their relationship to new heights only seen in the 1990s and early 2000s when both were active members of KANU under the leadership of former President Daniel Arap Moi. When the ICC announced in late January 2012 that it had confirmed charges against each of the six suspects and who would proceed to trials there was a real fear that the decision by the Court would lead to ethnic tensions, regardless of the legal merits<sup>34</sup>, fortunately this did not happen. The ICC's decisions would continue to play a pivotal role in Kenya's political process, especially prior to the 2013 election. The court appeared cognizant that these could not be viewed by many Kenyans simply as legal decisions and that the timing and framing of proceedings and rulings would inevitably have an impact in heightening or further dampening tensions in the country as it prepared for the elections.

Accordingly, the ICC would release public statements warning suspects and other politicians not to politicize the judicial proceedings, such as the one released by ICC

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<sup>33</sup>Ibid

<sup>34</sup>Kakaire Sulieman, ICC blamed for stocking inter-ethnic tension in Kenya, March 11 2013, the Africa Globe <http://www.africanglobe.net/africa/international-criminal-court-blamed-stoking-inter-ethnic-tensions-kenya/>

Judge Ekaterina Trendafilova's on 5 October 2011<sup>35</sup> noting that continued hate speech would be considered in the pre-trial deliberations. In addition in a press statement issued by the ICC on 26 October, the court said:

*The Chamber also reiterated its appeal previously made to all concerned and citizens of the Republic of Kenya to respect the life, security and property of victims and witnesses and to refrain from engaging in any activities that are likely to trigger or exacerbate tension and violence in the Republic of Kenya.*<sup>36</sup>

This helped to dampen and deter aggressive ethnic and political rhetoric prior to the 2013 election but on the other hand had a negative impact on the media who self-censored denying the Kenyan public information. While the ICC still remained respected in Kenya, prior to the 2013 general elections, public approval of its role had been declining<sup>37</sup>, due to smart media engagement by the Jubilee Coalition as well as skillfully crafted public statements that turned the court into a neo-colonial judicial mechanism out to oppress Africa. In order to counter misconceptions of the court's decisions prior to the 2013 general elections, the court and its supporters, including both local and international civil society intensified public information and outreach efforts to explain its mandate workings and process. In fact, at the time the ICC opened an outreach office in Kenya whose work was partly to advocate for the ICC in the country.

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<sup>35</sup>Mathenge Oliver, ICC warns Kenya Suspects against intimidation, Africa Review, October 5 2011 <http://www.africareview.com/News/ICC-warns-Kenya-suspects-against-intimidation/-/979180/1248616/-/format/xhtml/-/iiand2z/-/index.html>

<sup>36</sup>International Criminal Court, Pre-Trial Chamber II will issue its decisions confirming or declining to confirm the charges in both Kenyan cases on the same date, 26 October 2011. [http://www.iccpi.int/en\\_menus/icc/press%20and%20media/press%20releases/press%20releases%20\(2011\)/Pages/pr737.aspx](http://www.iccpi.int/en_menus/icc/press%20and%20media/press%20releases/press%20releases%20(2011)/Pages/pr737.aspx)

<sup>37</sup>Wanyama Henry, 61 percent of Kenyans want ICC cases dropped, The Star Newspaper, February 1 2011

In addition, the position to support the process at the ICC by civil society groups (especially those in the human rights and governance sector), through advocacy efforts and the release of public statements, would later come to haunt them. By accepting to support the ICC, they had inadvertently taken a political position, supporting Raila Odinga who at the time was the biggest contender to Uhuru Kenyatta and William Ruto<sup>38</sup> who both faced trial at the ICC. The Kenyan public's perception of civil society, as a result of public statements and media engagement in support of the case before the court, would change for the negative and they would no longer be seen as non-partisan bystanders but as organizations whose agenda was to stop an Uhuru Kenyatta presidency, which may have been incorrect but an inevitable circumstance that they would find themselves in.

### **3.4.2 ICC's Role in the 2013 Kenyan Elections**

Kenya's 2013 election quickly became the subject of the ICC especially due to the high media attention by both local and international media as two of the accused persons in the Kenya cases and at the time possible president and deputy, Uhuru Kenyatta and William Ruto respectively asking judges to consider setting a trial date that could fall after the presidential election.<sup>39</sup>

Before this request, the potential clash between Kenya's electoral schedule and the trials of four Kenyan accused before the ICC had only been the subject of political meetings in the country and public debate. This was inevitable as two of the accused were presidential candidates in the election, which had been scheduled for March 4, 2013.

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<sup>38</sup>Wanambisi Laban, poll, Raila-Kalonzo will beat Uhuru-Ruto. Capital Fm, 14 December 2012 <http://www.capitalfm.co.ke/news/2012/12/poll-raila-kalonzo-will-beat-uhuru-ruto/>

<sup>39</sup>Musau Nzau, Ruto applies for ICC Trial after Elections. The Star Newspaper, May 29 2012 <http://www.the-star.co.ke/news/article-16581/ruto-applies-icc-trial-after-election>

Although Kenya's IEBC at the time had set the March 4 2013 date, there had been a court case in the country that was at the appeal stage in which judges were being asked to determine Kenya's election date <sup>40</sup>with rumors of the election being pushed passed 2013. This increased further tension that the March date could be changed increasing anxiety in the country that the general elections would not take place after an announcement in the previous year that the election would not be held on December '2012 as had been anticipated by many Kenyans.

In March and April 2013, both Uhuru Kenyatta and William Ruto received approval from the elders of their ethnic communities to run for Presidential office although they faced charges at the ICC. At the meetings, that received wide media coverage, various local, religious and political community elders and leaders separately endorsed the presidential aspirations of Uhuru Kenyatta and William Ruto, the groups also stated that they would petition the ICC to have the trials postponed until after Kenya's elections, arguing that it was the fundamental and constitutional right of every Kenyan to choose the leaders they want.

It was not clear if the judges of the ICC's Trial Chamber V would take into consideration the Kenyan election date in determining when to schedule the first day of the Kenya trials. However, it seems the ICC took notice of the mood in Kenya as well as the wide media coverage by international press such as Reuters and CNN as well as various public announcements locally prior to the Kenyan Elections and judges at the Court asked for proposals on a trial date and how the prosecution and defense teams would exchange evidence, among other things. They set May 28 2013 as the deadline for written submission for the status conference where all parties would sort out the

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<sup>40</sup>The East Africa centre for law and justice, The court of appeal ruling on the election date, 8 August 2012

preliminaries necessary to ensure a smooth trial.<sup>41</sup> That status conference was to be held on June 11 and June 12 2013 respectively- after the general elections. The accused in the first case before the ICC had asked the trial date be set after March 4, 2013. One of them, William Ruto, had argued through his lawyers that the 2013 general elections presented an important and better opportunity for him to continue reconciliation efforts he had began after the violence that nearly tore Kenya apart in early 2008.

In addition, lawyers for Uhuru Kenyatta, who was one of the accused persons in the second case, had not referred to the election. Instead, they had argued that fixing a trial date depended on the time it would take the prosecution to disclose its evidence and how long it would take them to analyze that evidence to determine their defense strategy. Lawyers for the other <sup>42</sup>accused in the second Kenya case, former Head of Public Service Francis Kirimi Muthaura, had made similar arguments. At the time the outgoing ICC Prosecutor Luis Moreno-Ocampo left it to the judges' discretion to determine the trial date. The Prosecutor, however, offered an estimate for case one and case two of how long it would take the prosecution to argue its cases once trials begun.

The prosecutor was keen to retain the redactions to witness statements and other prosecution documents that applied during the pre-trial phase and was the great frustration of the defense lawyers. The prosecution wanted those redactions and the anonymity of witnesses retained until 60 days and in some cases 30 days, before trial. At that point the prosecution believed the defense could have full knowledge of the witnesses offering testimony against their clients without unnecessarily exposing those

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<sup>41</sup>Maliti Tom, Two Kenyans want ICC trials to start after Kenya Polls, ICC Now June 6 2012.

<sup>42</sup>Barkan, Joel D. 2013. "New Forces Shaping Kenyan Politics." *CSIS: African Notes No.* Washington Center for Strategic and International Studies.

witnesses and or their families to security risks. The prosecution also believed that the proposed 60-day period, or 30-day period, was sufficient for the defense to investigate the witnesses and prepare its case. All defense lawyers said that they were waiting for the prosecution's submissions before knowing how they would exchange evidence with the prosecution. They had, however, expressed reservations about redacted materials and also wanted the prosecution to disclose sensitive information well in time to allow them prepare a defense.

The Prosecutor also said that he had presented for the trial judges' submissions he made to the pre-trial chamber, highlighting several instances of witness interference<sup>43</sup>. He said the prosecution was investigating activities, such as cases of individuals posting material online, claiming it revealed the identity of protected witnesses. Ocampo at the time argued that his investigation was in the context of Article 70 of the Rome Statute. Article 70 deals with offenses such as obstructing or interfering with witnesses. It states that if anyone found guilty faces a sentence of not more than five years, or a fine.

With Kenyans following the case closely, their anxiety in relation to the 2013 general elections and the ICC case was put to rest, however, campaigning by both the Jubilee coalition and CORD coalition intensely revolved around the cases before the ICC.

### **3.4.3 Kenya Elections and Elect Leaders Versus The ICC and West**

On March 4 2013, Kenya held its first General Elections under the new constitution; Uhuru Kenyatta was declared the President Elect by the IEBC after garnering 6,173,433 votes over Raila Odinga's 5,340,546. Kenyatta had been able to secure 50.51% of the vote over his closest contender Odinga who had 43.70% closely

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<sup>43</sup>Opiyo Peter, Ocampo warning over witnesses triggers alarm in government, The Standard, March 16 2012 <http://www.standardmedia.co.ke/business/article/2000054159/ocampo-warning-over-witnesses-triggers-alarm-in-government?pageNo=1>

avoiding a run-off. <sup>44</sup>However, Raila Odinga and civil society groups challenged the results at the Supreme Court alleging irregularities that had affected the election results and calling for fresh elections. In a court challenge televised live on all Kenyan TV stations as well as majority of the Radio Stations, Kenyans had to wait anxiously for a verdict from the Supreme Court. On 30 March 2013, almost a month since the general elections, Kenya's Supreme Court upheld Uhuru Kenyatta's election as president. <sup>45</sup>

The Supreme Court decision left many members of the international community in particular western states that had ratified the Rome Statute and the UN in an awkward position-many states having their largest African missions based in Kenya or the UN which has UNEP and UN-Habitat headquartered in Kenya. Kenya's newly elected president, and his running mate William Ruto, both faced charges at the ICC for the roles they may have played during Kenya's post-election violence in 2007-2008. The Kenya trials also suddenly took a more complex twist as Kenyatta and Ruto were no longer individuals facing trial at the ICC but were now democratically elected head of state and deputy head of state facing trial in a foreign court. The decision by the Supreme Court also provided a dilemma for these states and the UN on how to diplomatically engage with Kenya and its new leadership.

Although both Uhuru Kenyatta and William Ruto had pledged to cooperate fully with the ICC, and with the Court stating that it would go ahead with the trials, the decision by the Kenyan Supreme Court was not good news for the ICC. The Kenya cases

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<sup>44</sup>Uhuru Kenyatta declared Kenya's Fourth President, The East African, March 9 2012 <http://www.theeastafrican.co.ke/news/Uhuru-Kenyatta-declared-Kenya-president-elect/-/2558/1715562/-/mr3hup/-/index.html>

<sup>45</sup>The Judiciary, Supreme Court full judgment of election petition 2013 <http://www.judiciary.go.ke/portal/assets/files/NEWS/FULL%20JUDGEMENT-PRESIDENTIAL%20ELECTION%20PETITION%202013.pdf>



had just become one of the most prominent and difficult cases that it would face. The Court, which had secured only one conviction so far from a case list that is almost exclusively African, already had a severe image and credibility problem which could only be further damaged by developments in Kenya and a growing Pan-African movement within the AU.

In addition, the ICC had just announced a new chief prosecutor, Fatou Bensouda<sup>46</sup>, an African, who had taken over from Ocampo and the court had also dropped charges against one of the other co-accused in the Kenyatta case, Francis Muthaura due to the withdrawal of key witness testimony. Since the case against Kenyatta is based on very similar evidence, lawyers for Kenyatta had requested that the case be sent back to the pre-trial chamber.

Indeed, Kenyatta and Ruto's electoral victory was seen by many as a rejection of the charges being leveled against him by an "imperialist" ICC. Kenyatta and his running mate William Ruto had previously gone on record accusing western interests of working against his presidency.

The Supreme Court decision and Kenyatta's election victory would also present a dilemma to Western States with a diplomatic presence in Kenya in particular the governments of the US and the UK who in the run up to, and the immediate aftermath of the elections seemed against the prospect of a Kenyatta and Ruto victory. Both states, through various public statements had declared a 'silent policy' of maintaining only 'essential contacts' with individuals facing trial at the ICC. Like Civil Society groups, this

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<sup>46</sup> Gambia's Fatou Bensouda sworn in as ICC Prosecutor, British Broadcasting Corporation, 15 June 2012 <http://www.bbc.co.uk/news/world-africa-18455498>

position had inadvertently led to the perception that they were partisan in the 2013 General Elections.

Indeed, prior to the 2013 General Elections, U.S. Secretary of State for Africa, Johnny Carson, himself a former US ambassador to Kenya, delivered a veiled public statement warning the Kenyan electorate on the implications of voting for an ICC indictee when he remarked in a conference call with reporters that "choices have consequences." Despite this warning (or perhaps because of it) Kenyatta and Ruto were democratically elected as President and Deputy President respectively -albeit by a slim margin. In a February 07 2013 Press briefing, Assistant Secretary of State Johnny Carson said:

*President Obama clearly stated that the choice of who will lead Kenya is up to the Kenyan people, but it is also important to note that choices have consequences. We live in an interconnected world and people should be thoughtful about the impact that their choices have on their nation and on the world.* <sup>47</sup>

Following the announcement of Kenyatta's election as president of the Republic of Kenya, Western states in carefully worded statements had initially refused to congratulate Kenyatta by name. However, following the Supreme Court announcement declaring Kenyatta as president, some of the western states including the UK and the US acknowledged the president-elect in their congratulatory messages. <sup>48</sup>The change in heart could possibly be linked to Kenya's past relations with these states as she was too

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<sup>47</sup>United States Diplomatic Mission to South Africa: Briefing on the upcoming General Elections with Assistant Secretary, Johnny Carsons. February 7 2013[http://southafrica.usembassy.gov/mediahub-av-carson\\_20130207\\_kenya.html](http://southafrica.usembassy.gov/mediahub-av-carson_20130207_kenya.html)

<sup>48</sup> Sahan Journal, US, UK, France Congratulate Uhuru Kenyatta On Election Victory. Sahan Journal, March 30, 2013. <http://sahanjournal.com/uhuru-kenyatta-kenya/#.UySRDiZWfdg>

important strategically to both the U.S. and the UK, especially due to its role in the fight against terror and its geopolitical position in Africa and the world. Indeed, the change in tact by both the US and the UK, represents what realists have always acknowledged that states are inertly selfish and have their own interests at the front of any engagement with other states.

### **3.5 Western Statements and the Kenya Elections (\* please see annex for statements by foreign governments)**

Following the March 4 2013 General Elections, the UK, US, Canada and the European Union in separate messages, praised Kenyans for holding peaceful elections<sup>49</sup>, however carefully avoiding to name Kenyatta and only offering blanket congratulations to all Kenyans. The UN Secretary General, Ban Ki-moon also refrained from mentioning Kenyatta in his congratulatory message. A statement by Ban Ki Moon's spokesman said the UN Secretary General had noted the results of Kenya's election. <sup>50</sup>Mr Ban in the statement congratulated the people of Kenya for their impressive determination to participate peacefully in the elections, and for the patience they had demonstrated while awaiting the results. The Secretary- General's spokesperson is quoted as saying:

*The Secretary-General has noted the results of Kenya's presidential election announced today by the Independent Electoral and Boundaries Commission (IEBC). He congratulates the people of Kenya for their*

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<sup>49</sup> Africa Review, Kenya election reactions: West cautious while China, African countries positive. Africa Review, March 10 2013. <http://www.africareview.com/News/Kenya-poll-reaction/-/979180/1716418/-/w3439o/-/index.html>

<sup>50</sup>UN, Statement attributable to the Spokesperson for the Secretary-General on Kenya. March 9 2013, <http://www.un.org/sg/statements//index.asp?nid=6646>

*impressive determination to participate peacefully in the elections, and for the patience they have demonstrated while awaiting the results.*<sup>51</sup>

African States including South Africa, Uganda, Tanzania and Somalia had however been more forthcoming, directly congratulating Kenyatta on his election as president<sup>52</sup> following the March 4 2013 election, perhaps a reason that led to President Kenyatta later announcing that Kenya would seek closer economic and political ties with other African States-that stood with him when the rest of the world turned their backs on him. For instance, South Africa, which is seen as Africa's most influential state through its President Jacob Zuma congratulated Uhuru Kenyatta for winning Kenya's presidential election. The South African President while responding to reporters noted that Kenyatta's trial at the ICC would not affect ties between South Africa and Kenya. In addition, Ugandan President Yoweri Museveni in a congratulatory message to President Kenyatta, notes:

*I am writing to congratulate you [Uhuru Kenyatta] on the historic victory you achieved by winning the tightly contested Presidential election in Kenya. Ugandans and the NRM congratulate you. We look forward to consolidating the brotherly relations between our two countries within the wider East African and the Great Lakes region. We also congratulate the people of Kenya on holding such peaceful elections.*<sup>53</sup>

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<sup>51</sup>ibid

<sup>52</sup>African Review, World leaders react to Uhuru Kenyatta court win. Africa Review. March 31, 2013. <http://www.africareview.com/News/-World-leaders-react-to-Kenyatta-court-victory/-/979180/1735308/-/tihh3bz/-/index.html>

<sup>53</sup>Uganda State House: President Museveni sends congratulatory message to President elect Uhuru Kenyatta, 9 March 2013. <http://www.statehouse.go.ug/media/presidential-statements/2013/03/09/president-museveni-sends-congratulatory-message-president-e>

On the other hand, Western states had previously warned that it would not do business as usual should Kenyatta and his deputy president William Ruto, all of who are facing crimes against humanity charges at the ICC, win the March 4 general election.<sup>54</sup> These countries consequently sent what could be termed as coded messages that the election of an ICC indictee would negatively affect their country's relations with Kenya. Sentiments that were not taken lightly by former Foreign Affairs Minister Sam Ongiri who on 11 February 2013 summoned EU ambassadors in Kenya to register his displeasure over what appeared to be an orchestrated attempt by the west to influence Kenya's election.

In addition, these messages by the UK, US and EU Ambassadors triggered an angry reaction from Kenyatta's Jubilee coalition which dismissed it as unwanted foreign interference in domestic matters as well as a plot by foreign powers to impose a preferred candidate.<sup>55</sup>

Indeed, immediately after Kenyatta's election as President and before the Kenya Supreme Court ruling, the US Secretary of State, John Kerry in an inexplicable message reaffirmed that his country will remain closely allied with Kenya, however not revealing whether the US policy towards Kenya had changed toward ICC indictees now that Kenyatta had officially been declared the winner of the presidential election.<sup>56</sup> In his congratulatory message, the US Secretary of State noted that the US stood with Kenyatta and noted that the US will continue to be a strong friend and ally of the Kenyan people.

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<sup>54</sup>William E. Scheuerman, *Hans Morgenthau: Realism and Beyond* (Polity Press, 2009); Michael Williams, ed., *Reconsidering Realism: The Legacy of Hans J. Morgenthau* (Oxford Univ. Press, 2001); Christoph Frei, *Hans J. Morgenthau: An Intellectual Biography* (LSU Press, 2001).

<sup>55</sup>Karanja Samuel, Western nations warned on political interference. Daily Nation, February 10 2013. <http://elections.nation.co.ke/news/-/1631868/1690116/-/p7ovtkz/-/index.html>

<sup>56</sup>Kerry John, Results of Kenya Elections. US Department of State, March 9 2013. <http://www.state.gov/secretary/remarks/2013/03/205897.htm>

The UK on the other hand in a statement largely targeted at the electorate and not the President-elect congratulated Kenyans noting that they had expressed their sovereign will. The then UK Minister for Africa Mark Simmonds expressed in a statement that it was historic when the Kenyan people on March 4 2013 “came together at the ballot box” to achieve the promise of the new Constitution and choose their future leaders-carefully refusing to mention both the President and the Deputy elect.<sup>57</sup>

In his statement, the UK Minister for Africa went further to note that he was confident that any election related disputes would be dealt with by the courts<sup>58</sup> “swiftly and fairly” noting the value of the historic partnership with Kenya and the UK which would continue to work in support of stability, security, development and prosperity. The Canadian High Commissioner to Kenya David Angell also in a public statement expressed his congratulations to the people of Kenya also noting that they exercised their democratic rights in electing their leaders. In his carefully worded message, the Canadian High Commissioner said that he had witnessed millions of Kenyans standing calmly and patiently in line for several hours in order to exercise their right to vote for presidential, parliamentary and county candidates.<sup>59</sup> In his statement the Canadian High Commissioner notes:

*Canada congratulates Kenyans on exercising their democratic right and on conducting peacefully the first elections under a new constitution.*

*Millions of Kenyans stood calmly and patiently in line for several hours in*

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<sup>57</sup> Simmonds Mark, Minister (UK) for Africa Comments on Kenya Elections Result. UK Foreign and Commonwealth Office, 9 March 2013. <https://www.gov.uk/government/news/minister-for-africa-comments-on-kenyan-election-results>

<sup>58</sup>ibid

<sup>59</sup>High Commission of Canada to Kenya, Canada Comments on Kenya Elections, March 9 2013. [http://www.canadainternational.gc.ca/kenya/highlights-faits/2013/ElectionNR\\_C.aspx?lang=en](http://www.canadainternational.gc.ca/kenya/highlights-faits/2013/ElectionNR_C.aspx?lang=en)

*order to exercise their right to vote for presidential, parliamentary and county candidates...*

The European Union, also considered as part of western states for the purpose of this research, through its High Representative for Foreign Affairs and Security Policy, Catherine Ashton, congratulated Kenyans for conducting peaceful elections, however ambiguously noting that the rule of law must be maintained in Kenya at all times.<sup>60</sup> At the time Raila Odinga, who lost the election, had expressed his dissatisfaction with the tallying process during the election and had stated that he would seek redress from the Supreme Court as provided in the constitution. Ms. Ashton in her statement went on to note that, the EU was confident that any disputes would be dealt with by the IEBC and the established judicial mechanisms in a fair manner.<sup>61</sup> She too did not mention Kenyatta and Ruto by name in her statements. In her statement Ms Ashton says:

*The European Union congratulates the people of Kenya for the largely peaceful elections. Kenyans have shown a strong commitment to electoral democracy by turning out in high numbers and peacefully exercising their democratic rights. The EU congratulates all those who have been elected successfully and commends those who have conceded defeat and appealed for peace...<sup>62</sup>*

The Chinese government, part of the Eastern States, however in their message, following IEBC's announcement of Kenya's new president, congratulated by name, the

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<sup>60</sup> EU, Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the elections in Kenya. EU, 9 March 2013. [http://europa.eu/rapid/press-release\\_PESC-13-107\\_en.htm](http://europa.eu/rapid/press-release_PESC-13-107_en.htm)

<sup>61</sup>Ibid

<sup>62</sup>See 177

then President-Elect Uhuru Kenyatta for winning elections. “Unlike their western counterparts, the statement by the Chinese Government was an indication that they had recognized Kenyatta as President and were willing to work with him. The Chinese Government went even further to congratulate Kenyans for voting peacefully. In a statement from the Chinese embassy in Kenya, the Chinese Government said they were looking forward to working with President Kenyatta.<sup>64</sup> And indeed soon after President Kenyatta took office, bilateral relations between the two countries has leap frogged to its closest since Kenya gained independence. Today China is seen as one of Kenya’s largest bilateral lenders and one of the most active foreign governments in infrastructure development in the country.

Former UN Secretary General Kofi Annan and a lead mediator during Kenya’s Post-election crisis, in a statement on behalf of the Panel of Eminent African Personalities<sup>65</sup>, applauded the calm exhibited by Kenyans as they waited patiently for the results of the election. Mr Annan also noted that he was encouraged by Cord’s Presidential candidate Raila Odinga’s decision to contest the outcome of the election as provided for in the constitution – through the courts. In his statement he said:

*I congratulate the winners and would like to pay tribute, once again, to the tremendous patience that the Kenyan people have exercised as they*

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<sup>63</sup>Shasha Deng, China congratulates Kenyatta on election victory. Xinhua, 11 March 2013 [http://news.xinhuanet.com/english/china/2013-03/11/c\\_132225468.htm](http://news.xinhuanet.com/english/china/2013-03/11/c_132225468.htm)

<sup>64</sup>African Review, World leaders react to Uhuru Kenyatta court win. Africa Review. March 31, 2013 <http://www.africareview.com/News/-World-leaders-react-to-Kenyatta-court-victory/-/979180/1735308/-/tjhh3bz/-/index.html>

<sup>65</sup>Annan Koffi, Statement by H.E. Kofi Annan on behalf of the AU Panel of Eminent African personalities. African personalities. March 30, 2013 <http://www.dialoguekenya.org/pressmedia/30-March-2013%20Statement%20by%20H.E.%20Kofi%20Annan%20on%20behalf%20of%20the%20AU%20Panel%20of%20Eminent%20African%20Personalities%20on%20the%20decision%20by%20the%20Supreme%20Court%20of%20the%20Republic%20of%20Kenya%20on%20the%20presidential%20election%20petition..pdf>



*waited for the conclusion of this much anticipated process. In accordance with the Constitution, the decision by the Supreme Court is final, and I applaud the Prime Minister's reaffirmation that he will honour the ruling as such. I call upon all the people of Kenya to do the same, and to continue to exercise the calm, restraint and tolerance that they have exemplified...*

However, on 30 March 2013, following the Supreme Court ruling upholding the election of Uhuru Kenyatta as president. US President, Barak Obama, through his spokesperson, released a statement congratulating President Kenyatta on his election as well as Kenyans for holding peaceful elections<sup>66</sup>. In the statement read by his spokesperson:

*On behalf of the President and the people of the United States, we congratulate Uhuru Kenyatta on his election as president of Kenya. We also congratulate the people of Kenya on the peaceful conduct of the election and commend Raila Odinga for accepting the Supreme Court's decision. We urge all Kenyans to peacefully accept the results of the election. The electoral process and the peaceful adjudication of disputes in the Kenyan legal system are testaments to the progress Kenya has made in strengthening its democratic institutions, and the desire of the Kenyan people to move their country forward.<sup>67</sup>*

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<sup>66</sup> White House (US), Statement by the Press Secretary on the Presidential Election in Kenya. March 30 2013. <http://www.whitehouse.gov/the-press-office/2013/03/30/statement-press-secretary-presidential-election-kenya>

<sup>67</sup> ibid

In addition, UK's Prime Minister David Cameron and French President Francois Hollande also sent congratulatory messages to President Kenyatta following the Supreme Court ruling. The UK and US statements received wide media coverage due to the now contradiction from those earlier provided by their government officials who had provided a perception that it would not have been business as usual in regards to bilateral relations if both Kenyatta and Ruto were elected as president and deputy. In addition, this also indicated that Kenyans had not heeded the warnings given by the US and UK diplomats on voting for ICC suspects. Their influence on the choice of preferred presidential candidate that Kenyans should have voted for through statements prior to the election could be argued had failed, yet Kenya was geopolitically too important to the two states for their own interests such as trade and the war on terror for these two states to isolate the country. Indeed for Western states such as the US and the UK this would not be the first time that they would have had to release contradictory statements as they have in the past found themselves in an awkward position in the Middle East and Tunisia where popular vote has given power to leaders they would not have wished to engage with.

One stark example where western states have refused to recognize a government is Hamas, a militant Palestinian party that since 2007 has ruled a mini-state in the Gaz Strip.<sup>68</sup> An offshoot of Egypt's Muslim Brotherhood, Hamas has long been regarded as terrorist group by Canada, US, Israel and the EU. But in 2006, it won a majority of seats in parliamentary elections held by the Palestinian Authority, defeating Fatah candidates who were widely seen as corrupt. It never took control, however, as talks with President Mahmoud Abbas, a member of Fatah, over how to divide power broke down.

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<sup>68</sup> Rose John, Palestine: Fatah, Hamas, Israel and the West. Socialist Review, January 2011  
<http://www.socialistreview.org.uk/article.php?articlenumber=9924>

For instance, Canada's Department of Foreign Affairs, International Trade and Development notes in its Policy on key issues in the Israeli-Palestinian Conflict:

*Canada has listed Hamas... and other groups as terrorist organizations in accordance with UN Resolution 1373 (2001) and Canadian legislation.*

*The Government of Canada has no contact with these groups.*

However, Kenya is different, with the ICC case against Uhuru Kenyatta and William Ruto weakening <sup>69</sup>and with strong past bilateral relations, western states have more to lose if they did not engage with the presidency. Kenya is an ally of the US in the war on terrorism <sup>70</sup>and the Kenya Defence Forces have played a key role in pushing back the rise of Al-Shabaab, a group that associates itself with Al-Qaeda. EU states are a key market for Kenyan agricultural products<sup>71</sup>and major companies have invested heavily in banking, construction, tourism, agriculture, security, telecommunications and other industries. Uhuru Kenyatta and William Ruto have also publicly committed to cooperating with the ICC. <sup>72</sup>

### **3.5.1 Western States Possible Relations After Kenyatta Win**

Much is at stake in the relationship between Kenya also East Africa's biggest economy and its main Western allies and donors. A diplomatic mishandle in dealing with Kenyatta could damage ties with Kenya a country that has helped quell al-shabaab, a militant Islamist group in the region and push a traditionally pro-Western state closer to

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<sup>69</sup>The Star, President Kenyatta Case still weak- Prosecutor. The Star February 5 2014. <http://www.the-star.co.ke/news/article-153946/president-uhuru-case-still-weak-icc-prosecution>

<sup>70</sup>Burrows Olive, US Senate backs Kenya terror war, Somalia incursion. Capital Fm , November 12 2013 <http://www.capitalfm.co.ke/news/2013/11/us-senate-backs-kenya-terror-war-somalia-incursion/>

<sup>71</sup>Kenya- EU Trade relations [http://eeas.europa.eu/delegations/kenya/eu\\_kenya/trade\\_relation/index\\_en.htm](http://eeas.europa.eu/delegations/kenya/eu_kenya/trade_relation/index_en.htm)

<sup>72</sup>Olick Felix, William Ruto commits to cooperate with International Criminal Court, cites "network of lies". Standard Newspapers, May 15 2013 [http://www.standardmedia.co.ke/?articleID=2000083636&story\\_title=ruto-commits-to-cooperate-with-icc-cites-network-of-lies](http://www.standardmedia.co.ke/?articleID=2000083636&story_title=ruto-commits-to-cooperate-with-icc-cites-network-of-lies)

China and other emerging powers hungry for openings in Africa today seen as virgin territory in regards to oil and other minerals. In a Reuters News article, a renowned journalist on African Affairs, Patrick Smith notes that a Uhuru Kenyatta Presidency may be problematic for the West partly because several Western officials inserted themselves into the Kenyan election campaign and made pretty clear they thought Kenyans should not vote for Kenyatta.<sup>73</sup>

Western States sudden change in relations with the Kenyatta Government, may in part have been shaped by pressure from various multinational companies with regional offices in Kenya as well as mining and energy companies and other foreign firms determined not to miss opportunities in a region that only recently discovered oil as well as shown potential for other mineral discoveries. Many of these MNCs such as Coca Cola (US), Mastercard (US), Tullow (UK), De La Rue (UK) and others have invested heavily in Kenya and would not want to find themselves in a situation that could be detrimental to their investments. Indeed this may partly be a reason as to why Western diplomats have been coy in outlining what keeping diplomatic dealings down to "essential contacts" means in practice, perhaps allowing them as much room for interpretation as possible as they assess how ICC case will end.

The US, UK and EU, who all provide donor funding to Kenya, have good reason not to want to see a Kenyatta presidency undo long standing relations. Western MNCs are well-entrenched in Kenya's economy which has steadily recovered from the Post-Election violence that followed the 2007 election. Diageo and Vodafone are among the big players. Kenya is a vital trade link for the rest of east Africa, where energy explorers

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<sup>73</sup>Blair Edmund, Western states walk diplomatic tight-rope over Kenyatta win. Reuters, 11 March 2014, <http://www.reuters.es/article/idUKL6N0C360A20130311>

include Britain's Tullow, Canada's Simba Energy and New York-listed Anadarko Petroleum operate. Regardless of Kenya's own reserves, its ports will play an export role for finds elsewhere. Indeed, the U.S., UK and EU foreign policy has been framed ideologically of late and 'realpolitik', security and business interests might seek to exert more influence over the policy makers and their responses to the Kenyatta government.<sup>74</sup>

Indeed a look at Kenya –US relations indicates that Kenya ranks among the top US Foreign Aid recipients in the world receiving significant development, humanitarian and security assistance. Kenya is also the top recipient of police and military counter-terrorism assistance from the US in Africa.<sup>75</sup>

While Western States determine their relationship with the Kenyan Government, President Kenyatta will also have to make his own careful decisions on Kenya's relations with the west. Although during election campaigns his party lambasted Western "interference" in the campaign, it is unlikely that Kenyatta would now as President want to jeopardize long-standing and lucrative ties with these states.

Much may be determined by the way the ICC case proceeds. His lawyers through Press Statements and independent observers say the case against him at the ICC is looking weak citing the unreliability of a key witness for the prosecution, Kenyatta's defense team have asked for the case to be thrown out before the trial's start date which also looks bleak.<sup>76</sup>

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<sup>74</sup> Citizen Television interview with UK High Commissioner Christian Turner- February ( <http://www.youtube.com/watch?v=QTZIZGGKN5Y>

<sup>75</sup>US-Kenya relations: current political and security issues; US Congressional research service, September 2013.

<sup>76</sup>Fountain News, Uhuru hoping to have ICC charges dropped. Fountain News, February 5 2014 <http://www.fountainnews.co.ke/uhuru-hoping-to-have-icc-charges-dropped/>

### **3.6 Information Funding and Environment**

According to research by Ipsos Synovate Kenya, the Jubilee Coalition had been the highest media spender followed by the Cord Coalition during this election period. By the end of last year, the Jubilee Coalition had spent Sh40.66 million (\$470,000) compared to Cord's Sh23.29 million (\$270,000). Eagle had spent Sh4.58 million (\$53,000), Amani Sh1.47 million (\$17,000) with other parties combined having spent about Sh10 million (\$115,000). It costs up to Sh615,000 (\$7,100) to put a full page political advert in the local newspapers. Presidential candidates and their running mates as well as governors also took up strategic billboards across the country. It costs an average of Sh140,000 (\$1,600) for each billboard, per month.<sup>77</sup>

The money is believed to have mainly been sourced from personal wealth, donations from supporters, party nomination fees and levies, party membership fees as well as party and presidential candidates' fundraisers. Political parties also raised funds during nomination. In addition several government departments, nonprofit organizations and private companies put their resources in promoting peace campaigns ahead of the 2013 elections.

Campaign financing by parties previously was shrouded in secrecy, and political parties generally did little to disclose their sources of funding. Campaigns are very expensive. In the past major corruption scandals were often linked to campaign and political financing. A 2012 draft Election Campaign Financing Bill would have forced parties to make public their finances and place a ceiling on the amount spent on campaigns. However, parliament did not reach agreement on the draft bill before its last

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<sup>77</sup> Big Money Campaigns that paid off, *Business Daily*- March 14 2013 [www.businessdailyafrica.com](http://www.businessdailyafrica.com)

session before the 2013 General Election and it is only in December 2013 that the bill finally was passed and assented to by President Kenyatta.

### **3.7 Role of the Media**

Kenyan media has been praised and criticized in almost equal measure over its role in the just concluded elections. The praise came from some unlikely quarters including government bureaucrats and the political class and even Ugandan President Yoweri Museveni among others<sup>78</sup>. The criticism however mainly from foreign media and civil society groupings have claimed that the media abdicated its watchdog role through self censorship setting the ground for widespread malpractice in the voting process and multiple failures on the part of the IEBC. The sharpest criticism came from the Economist magazine.<sup>79</sup>

In order to understand the role media played and in particular why they may have self-censored it is important to go back to the 2007/ 2008 Post –election violence and the naming of suspected Kenyans behind the Post Election Violence by the ICC. Following the handing over of the envelope by Koffi Annan to the ICC, it emerged that one of the suspects was a journalist– Joshua Arap Sang, formerly of Kass FM, is accused by the Court of spreading hate speech that propagated the violence at the time. Due to this, some of the accusations local media has faced in regards to the 2013 General Elections included but are not limited to self censorship, ‘peace at all costs’ reportage, a failure to interrogate the capacity of the IEBC all in an effort to maintain the fragile peace.<sup>80</sup>

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<sup>78</sup> Ndonga Simon, Museveni praises Kenya for Rejecting ICC Blackmail, Capital Fm, 9 April 2013

<sup>79</sup> A Kenyatta is back in power, The Economist, March 16 2013 <http://www.economist.com/news/middle-east-and-africa/21573592-coalition-led-kikuyu-countrys-richest-and-biggest-ethnic-group-has>

<sup>80</sup> Barkan, Joel D. 2013. “New Forces Shaping Kenyan Politics.” *CSIS: African Notes No.* Washington: Center for Strategic and International Studies.

However, also looking through articles written by journalists working for foreign media organizations it also seems that they had come to Kenya with a predetermined narrative of doom and gloom, perhaps anticipating for a repeat of post-election violence which would have been a better sale for readers than the non-eventful 2013 general elections. Nothing manifests this more than the unfortunate piece of journalism by the well-respected CNN<sup>81</sup>, which purported to cover a group of youth in Rift Valley preparing for combat. At best, it looked like an amateur script in its early stage of production.<sup>82</sup>

### **3.8 Nairobi's Elite's and University Educated Feelings about the West**

From the sample population it can be deduced that a majority of Nairobi's university educated feel that Kenya's position in Africa is rising and to be reckoned with especially with Kenya's geopolitical positioning in Africa and with the recent discovery of oil and minerals. They feel that with the growing Chinese interest, the West can only ignore Kenya at their loss. Thus, the rise in popularity of Uhuru Kenyatta and William Ruto, both youthful with a vision of making Kenya more economically independent than it is, promising a future with less unemployment rates. In addition, promising to bring an end to perceived imperialistic motives by western states especially through the ICC process. This notion is based on the unfounded assumption that Western governments and businesses fear that Asian countries such as China are likely to replace them as strategic partners in Kenya and the Horn of Africa.

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<sup>81</sup> Ndonga Simon, CNN Video Stage managed- Kenya. Capital Fm, March 2 2013 [http://www.capitalfm.co.ke/news/2013/03/cnn-militia-video-stage-managed-kenya/?wpmp\\_switcher=mobile](http://www.capitalfm.co.ke/news/2013/03/cnn-militia-video-stage-managed-kenya/?wpmp_switcher=mobile)



Isolating the west appears untenable to Kenya, in reality Kenya still needs the west and will do so for many years to come. Indeed President Kenyatta's first visit outside of Africa, which is hardly ever highlighted, was to the UK, a key western state<sup>83</sup>. The visit, although to an international conference on Somalia, yielded a clear demonstration of what essential contacts entail with both Kenyan and international media replaying public statements that had been made by both Kenyatta prior to the election and the UK High Commissioner in relation to essential contacts with ICC Indicted individuals. Indeed the Kenyatta government used the UK visit to its advantage with several press releases and statements released by the then Presidential Press Unit to media outlets across the UK and Kenya. For instance the May 9 2013, press statement following Kenyatta's visit to London that mentions that President Kenyatta met with the British Prime Minister yet only a few months earlier the British High Commissioner to Kenya had said that contact with the Kenyan government would be only essential. The State House Press statement, to refute, earlier warnings on essential contact goes on to say:

*During the visit, President Kenyatta attended the London Conference on Somalia and also met and held talks with British Prime Minister David Cameron among other official engagements. At the bilateral meeting between Prime Minister Cameron and President Kenyatta, the British Prime Minister hailed the strong historical ties that Kenya and the United Kingdom have continued to enjoy. The Prime Minister added that the relations between the two countries have been mutually beneficial and*

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<sup>83</sup>Sugow Abdikadir, What Uhuru's UK visit means to Nairobi-London ties. The Standard, May 12 2013. [http://www.standardmedia.co.ke/?articleID=2000083463&story\\_title=what-uhuru-s-uk-visit-means-to-nairobi-london-ties](http://www.standardmedia.co.ke/?articleID=2000083463&story_title=what-uhuru-s-uk-visit-means-to-nairobi-london-ties)

*underlined the commitment of the British Government to strengthen the relations further.*<sup>84</sup>

It could be argued that, due to the high media attention that President Kenyatta's visit to the UK (on the sidelines to the Somali London conference) generated, it may have been on these grounds that a debate in the House of Lords urged the British government to enhance its relationship with Kenya.<sup>85</sup>

Indeed from the findings above, it can be argued that public statements and media articles did play a significant role in the election of President Kenyatta and his deputy William Ruto. Furthermore, Post-election, public statements have also indicated that the new Kenyan government plans to unveil a policy focused on East African integration, pan-African cooperation and trade, as well as its recent announcement of looking "East" (at countries such as China, Russia, India as well as Brazil and Australia) with an undermining of anti-Western rhetoric and hostility towards the ICC process. However, public statements have also mirrored the fact that Kenya cannot in any sense isolate itself from the west. It would be impossible, as its links with the west remain strong, be it colonial or in regards to security or international treaties that Kenya has ratified.

However, the new government is providing and successfully a picture of a more independent and pan-African state. Undeniably, public statements have played a role in this. For instance, president Kenyatta's carefully worded speeches during his inauguration ceremony<sup>86</sup> and his speech before parliament<sup>87</sup> as well as statements

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<sup>84</sup>State House Kenya, President Kenyatta jets back from London, May 09 2013, <http://www.statehousekenya.go.ke/news/may2013/2013090501.htm>

<sup>85</sup> Citizen Television interview with UK High Commissioner Christian Turner- February 6 <http://www.youtube.com/watch?v=QTZIZGGKN5Y>

<sup>86</sup>President Uhuru Kenyatta Inauguration Speech April 9 2013 <http://www.standardmedia.co.ke/?articleID=2000081197>

released by his communication secretary and the Foreign Affairs Cabinet Secretary have alluded to a change in policy that somewhat ignores the west which could presumably be an overflow from statements made by western states prior to the 2013 general elections that may have provided a negative perception on a Kenyatta/Ruto win. This approach will definitely lead to tensions and contradictions in Kenya's previous foreign policy. Principally, the plank predicated on East African integration will meet its first hurdle as Kenya attempts to join South Africa, Nigeria, Brazil, India and China as one of the sub-imperialist hubs in the African continent because Kenya can only achieve its regional hegemonic goals by growing its interests outwardly and overwhelming its neighbors by consolidating their own national economies to Kenya and, by extension, their internal stability, security and sovereignty.

For instance, the incursion of the Kenya Defence Forces into neighboring Somalia, although lauded by a largely uncritical Kenyan Media, Kenya's invasion of its northeastern neighbour elicited a lot of debate from a handful of home-grown analysts. One of these commentators is Onyango Oloo. In two digital essays posted on the Kenya Democracy Project blog<sup>8889</sup> and widely distributed across social media platforms, Oloo termed Kenya's "adventure" into Somalia as "quixotic" and implored the Kenyan government to learn from its mistakes before it was too late.<sup>90</sup>

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<sup>87</sup>President Uhuru Kenyatta Speech during the official opening of Parliament, April 16 <http://www.capitalfm.co.ke/eblog/2013/04/16/president-uhurus-speech-during-official-opening-of-11th-parliament/>

<sup>88</sup> Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), p. 2.

<sup>89</sup> Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), p. 2.

<sup>90</sup> Human Rights Watch (2013). "Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya." New York: Human Rights Watch.

In the digital article, Oloo pointed out that contrary to the impression that this is an angry national reaction to a recent provocation, the fact of the matter is that this military operation has been in the planning pipeline for quite some time. He added that according to impeccable sources familiar with the inside workings of Kenya's military, intelligence and security machinations, what is happening in Somalia is part of a detailed and coordinated IGAD joint intervention in Somalia with specific roles for Ethiopia, the transitional federal government in Mogadishu, AU troops and the Kenyan military.

This argument was supported by a story published in the 28 October 2011 issue of The Africa Report that mentions the Kenyan political leadership as being at the highest echelons, admitting that an earlier plan to covertly go after Al-Shabaab using specially trained elite forces recruited from the ethnic Somali population in Kenya floundered. This was after most of the recruits deserted after their training. Oloo further posits that rather than this incursion into Somalia being propelled by a patriotic Kenyan desire to defend the country, it turns out that the Kenyan people were just pawns in the larger US-NATO geo-political agenda to "stabilise" the Horn of Africa region. The stabilisation is in line with the wider imperialist agenda of consolidating world monopoly capital, which has of late been buffeted by a severe financial crisis in the US itself, the meltdown of the Euro and growing protests by the burgeoning global Occupy Wall Street-inspired citizen mass movement.

More contradictions in the anti-Western posturing shown by supporters of the Kenyatta led Jubilee coalition, particularly on foreign policy, revolve around key spinner. This is held by The Africa Report, which pointed out that the gulf between the anti-Western stance that was seen in the media during the Jubilee campaign prior to the

General elections and the sordid reality that those very messages used to win the election were crafted for the Kenyatta campaign by British staff of a savvy PR firm founded in London<sup>91</sup>, a capital of a western state. Although Kenyatta appeared against and perturbed by alleged British High Commission involvement in Kenya's 2013 elections, this position was in direct contradiction to his reality as he had hired British firms first to represent him at his trial at the Hague (his counsel) and to work on both his public image before of the ICC trials and his presidential election campaigns (his PR Firm).

Kenyatta's use of a British PR firm is noteworthy given the campaign's consistent demonization of the interference of "Western imperialists" in Kenya's affairs. Kenyatta arguably one of the richest men in Africa according to a 2011 Forbes Africa Magazine ranking could under further analysis appear entirely hypocritical.<sup>92</sup> In addition, his pre-election campaign messaging through media outlets kept hammering out a nationalist and Pan-African rhetoric. This approach appeared to win the support of the largely ethnic blocks that voted for the Jubilee Alliance Coalition, and hence should be appreciated for its successful propaganda value. In effect, one only needs to look beyond the slick marketing, image processing and electioneering propaganda to examine whether in reality the Uhuru-led Jubilee regime is actually as "anti-West" as it projects itself.

In dissecting the true foreign policy and/or agenda of the new government, one needs to look beyond the pseudo-nationalist rhetoric of the Kenyatta administration<sup>93</sup>. This requires a relook at its proposed policies, and one may be tempted to conclude that

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<sup>91</sup> Mathenge Oliver, How British PR Firm helped Jubilee win. The Star, April 6 2013 <http://www.the-star.co.ke/news/article-115522/how-british-pr-firm-helped-jubilee-win>

<sup>92</sup> Forbes Africa Magazine, Africa's 40 Richest. November 16, 2011 [http://www.forbes.com/lists/2011/89/africa-billionaires-11\\_Uhuru-Kenyatta\\_FO2Q.html](http://www.forbes.com/lists/2011/89/africa-billionaires-11_Uhuru-Kenyatta_FO2Q.html)

<sup>93</sup> Kenya, IEBC (Independent Electoral and Boundaries Commission), 'Home', <http://www.iebc.or.ke/index.php/Page-4.html>, accessed 24 August 2012.

although it is too early in their term, the government is likely to emerge as the most pro-West group to rule Kenya since 1963. Indeed, the lobbying by the Foreign Affairs Cabinet Secretary in regards to the ICC, has seen her approach several western leaders, in addition, following the Westgate Mall terrorist attack, investigations included forensic agencies from Israel, US; UK and Canada- all western States.

However, there are still remain difficulties and numerous factors that make it difficult to unravel the above assumption in regard to the Jubilee government emerging foreign policy. This is particularly mirrored in the on-going cases before the ICC especially on how they evolve and are managed. A case in point, the controversial visits by the <sup>94</sup>deputy president to countries in Africa prior to the 2013 AU summit at the expense of the tax payer.<sup>95</sup>

President Kenyatta and his Deputy, William Ruto are on trial at the Hague for serious charges of crimes against humanity directly affecting their own citizens. However, it is relatively clear that there will be attempts to use regional and African bodies to rally support for the deferral of the case. <sup>96</sup>Thus, the emphasis of foreign policy is likely to continue shifting and will therefore not be based on any key principles. It will start and end with the ICC until the trials end. And public statements will still be extremely relevant in getting public support for the government.

The Kenyan elections were held in March 2013 and Kenyatta and his deputy were democratically elected. However international media, has been less than fair in its

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<sup>94</sup> KNBS (Kenya National Bureau of Statistics), *Economic Survey (2011)*. Nairobi: Government Printer, p. 277

<sup>95</sup> Kenya, CIC (Commission for the Implementation of the Constitution), 'Bill Tracker', [http://www.cickenya.org/bill\\_tracker?page=1](http://www.cickenya.org/bill_tracker?page=1), accessed 24 August 2012.

<sup>96</sup> AFP, UN Security Council rejects AU bid for suspension of Kenyan ICC trial. The East African, November 15 2013. <http://www.theeastafican.co.ke/news/United-Nations-Security-Council-Vote-ICC-Cases/-/2558/2074848/-/ajw7pfz/-/index.html>

verage portraying Kenyans as lacking a clear understanding of who and what the ICC does. The research conducted for this paper indicates otherwise. Kenyans do know the ICC and were fully aware of the 2007 post-election violence and the President they voted for in the 2013 General elections. The Sample population understood the importance of freedom and the right to govern their destiny, indicating a people more resilient and committed to the democracy than portrayed by western media.

### **1.9 Current Political Background**

The March 4 2013 elections provided a challenging and complex operation. Six different elections took place on 4 March 2013, which were held simultaneously for the first time in the electoral history of the country: presidential, parliamentary (Members of Parliament and women representative and Senate) and local government (County Governor and County Assembly). The Constitution provides six elective positions namely: the President, Member of National Assembly (MP), Member of Senate (Senator), Governor, Women representative and County (or ward) representative. The new electoral system also comprised a direct election to elective positions, proportional representation based on party lists and special seat allocation for the youth, persons with disabilities and workers.<sup>97</sup>

For the 2013 General Elections, 59 registered political parties were permitted to compete. <sup>98</sup>The main political parties in competition were: The National Alliance (TNA), led by Uhuru Kenyatta (from Central province), and former Deputy Prime Minister in the coalition government; United Republican Party (URP), led by William Ruto, former Minister for Agriculture (Rift Valley); Orange Democratic Movement

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<sup>97</sup> About the Parliament of Kenya. Parliament of Kenya 2013 [www.parliament.go.ke](http://www.parliament.go.ke).

<sup>98</sup>European Union Election Observation Mission- Preliminary Statement. March 6 2013. Pp2

(ODM), led by the Prime Minister Raila Odinga (from Nyanza province); Wiper Democratic Movement (WDM), led by Kalonzo Musyoka, former Vice-President, (Eastern Province); United Democratic Forum (UDF), led by Musalia Mudavadi, the former Deputy Prime Minister (Western)<sup>99</sup>. Closer to the March 4 General elections, many of these parties formed coalitions, with the biggest coalitions being Jubilee Alliance, whose major parties were TNA and URP and CORD whose major parties were ODM, Wiper and Ford Kenya. Following the announcement of the elections results, as discussed earlier, the Jubilee Alliance formed the Government with its party Leader, Uhuru Kenyatta and its Deputy Party Leader William Ruto becoming President and deputy President respectively. CORD on the other hand is now considered as the official opposition. The consequences that some western countries had warned about are yet to be seen. It seems that it is business as usual, as seen by the meeting that President Kenyatta had with the British Prime Minister on the sidelines of the Somali Conference in 2013 and the meeting that President Kenyatta had with the French President in April 2014. In addition the observations made in this chapter and impact will be further analyzed in chapter four.

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<sup>99</sup>Kenya, IEBC (Independent Electoral and Boundaries Commission), 'Home', <http://www.iebc.or.ke/index.php/Page-4.html>, accessed 24 August 2012.



## **CHAPTER FOUR**

### **KEY EMERGING ISSUES FROM THE STUDY**

#### **4.1 Introduction**

This chapter comprises of key emerging issues from the study. A critical analysis is a second look at the emerging issues on the implication of public statements by USA, the European Union and other likeminded partners on the outcome of Kenya's elections but this time from a more scholarly perspective. This chapter covers into details the following emerging issues with a particular emphasis on the March 4 2013 General Elections and public statements made; The Kenya cases at the ICC in relation to the 2007/2008 post election violence which is seen as an influencing factor, Campaign environment financing, statements by the West and their implication and role in the Kenyan elections and leaders and the role of the media.

The information discussed in this chapter is guided by the following hypothesis:

H0: Public Statements have no relationship with outcomes of General Elections.

H1: Public statements made by foreign government and diplomats influence the outcome of General Elections.

H2: Public Statements by foreign governments and diplomats do not influence perceptions and outcomes of General Elections.

#### **4.2 Population Profile**

In light of this, the following were the primary data findings acquired from the respondents in the area of study in regards to the election of President Kenyatta and his

deputy William Ruto both facing trial at the ICC and the role statements by the west played in their election. Respondents were from the informal settlement of Mathare which is home to over 700,000 people occupying an area of two miles long by one mile wide. The focus of the study was residents of Mathare 4A Kosovo which is largely inhabited by the Luo community and AC Kijiji cha chewa/Dubai which is largely inhabited by the Kikuyu community<sup>100</sup>. The field of study included two areas (Mathare 4a Kosovo and ac Kijiji cha chewa/Dubai).

The two areas are densely populated with a total of 250, 000 residents. Since the population is over 10,000, according to Cochran<sup>101</sup> the following sample determination where the population is above 10,000 will be used. This design has been chosen because it enables the researcher to map out the relationship of the social unit with the social factors and the forces involved in its surrounding environment. The sample size found through Cochran's formula<sup>102</sup> uses two key factors to determine the sample size. The first being the risk the researcher is willing to accept in the study, commonly called the margin of error and secondly the level of acceptable risk the researcher is willing to accept that the true margin of error exceeds the acceptable margin of error.<sup>103</sup>

Using Cochran's rule for simple random sampling<sup>104</sup>, The sample size was determined using statistical population surveys whereby:

$$N = Z^2 * pq / d^2$$

<sup>100</sup> Warigi, Gitau. 2013. "The Ghost of 2013 Failure." *Daily Nation (Kenya)*, January 13.

<sup>101</sup> Cochran, W. G. (1977). *Sampling Techniques* (3rd ed.). New York: Wiley.

<sup>102</sup> Detailed explanation of the use of this formula has been provided by Barlett II, J.E., Kortlik J.W. and Higgins, C.C. (2001). *Organizational Research: Determining Appropriate Sample Size*. In *Survey Research, Information Technology, Learning and Performance Journal*, 19 (1), 43-50.

<sup>103</sup> Barlett II, J.E., Kortlik J.W. and Higgins, C.C. (2001). *Organizational Research: Determining Appropriate Sample Size*. In *Survey Research, Information Technology, Learning and Performance Journal*, 19 (1), 43-50.

<sup>104</sup> See 222

Where  $N$  = desired minimal sample size (where  $pop > 10,000$ )

$Z$  = Standard normal deviation which is equal to 1 at 95% confidence level.

$P$  = Proportion of the target population estimated to have a particular characteristic being measured. In this case it is estimated to be 0.5.

$$q = 1 - P$$

$d$  = the level of statistical significance set which in this case is 0.05.

$$N = 1.96^2 \times 0.5 \times 0.5 / 0.05^2$$
$$= 384$$

In order to obtain reliable results from the study it is necessary to have a representative sample, hence the sample size will be 384.

The data was gathered exclusively from questionnaire as the research instrument. The questionnaire was designed in line with the objectives of the study. In the questionnaire the researcher also considered the use of Likert scales commonly used to measure continuous variables. The scale used in this study consists of five points labelled as 1 = "no extent", 2 = "little extent", 3 = "moderate extent", 4 = "great extent", or 5 = "very great extent".

A sample of 384 respondents was taken as a representative of the whole population. All the respondents were registered voters. The sample respondents were used in collecting data with regard to the implication of public statements by US, EU and likeminded partners on the outcome of Kenya's March 4 General Elections. The target area being the Mathare Slum in Nairobi and in particular the villages of Mathare 4, Kosovo and AC Kijiji cha chewa/dubai. The study was conducted in the months of August and September 2013.

**Table 4.1: Response Rate**

Response	Frequency	Percentage
Responded	347	90
Not responded	37	10
Total	384	100

*Source: Researcher (2013)*

From the study, 347 out of 384 sampled respondents filled in and returned the questionnaire contributing to 90%. This response rate was made a reality after the researcher made personal visits to remind the respondent to fill-in and return the questionnaires.

**Table 4.2: Age**

Age	Frequency	Percentage
Below 20 years	31	19%
21-25 years	59	15%
26-30 years	69	20%
30-35 years	66	17%
36-40 years	52	12%
40-50 years	42	9%
Above 50 years	28	8%
Total	347	100

*Source: Researcher (2013)*

Majority of the respondents, 20% were aged between 26-30 years, 19% were aged below 20 years, 17% were between 30-35 years, 15% were in the class of 20-25 years, 12% in the class of 36-40 years, 8% were above the age of 50 years and lastly 9% of the respondents were aged between 40-50 years. The findings show that majority of the respondents were at their youthful stage as per the Kenyan Constitution of the age between 18-30 years. This finding is significant to the study, as it indicates that the youth who form the largest population in informal Settlements in Nairobi, did participate in the 2013 General Elections. In addition, the Jubilee and ODM manifestos also had large components dedicated to Youth Empowerment.

**Table 4.3: Education Level**

Education Level	Frequency	Percentage
Primary	139	40%
Secondary	115	33%
College	59	17%
University	35	10%
Totals	347	100%

*Source: Researcher (2013)*

On education level 36% of the respondents who were the majority had attained primary school certificate, 33% had a secondary certificate, 19% had college certificates and diplomas and lastly 12% had attained university level. According to the study findings majority of the respondents didn't have a well established education background considering their age factors.

**Table 4.4: Marital Status**

Marital Status	Frequency	Percentage
Married	120	35%
Single	145	42%
Divorced	42	12%
Widowed	40	11%
<b>Total</b>	<b>347</b>	<b>100%</b>

*Source: Researcher (2013)*

According to the marital status of the respondents, 42% who were the majority were single, 35% were married, 12% divorced and 15% had widowed

The respondent resided in mathare Area Four – A4

**Table 4.5: Residency Years**

Residency years	Frequency	Percentage
Below one year	42	12%
1 – 2 years	42	12%
2 – 4 years	59	17%
4 – 6 years	80	23%
6 – 10 years	56	16%
10 – 15 years	31	9%
Above 15 years	38	11%
<b>Total</b>	<b>347</b>	<b>100%</b>

*Source: Researcher (2013)*

On the no. of years in the residence, 23% who were the majority indicated that they had resided in the area for a period of 4-6 years, 17% had resided for a period of 2-4 years, 16% for a period of 6-10 years, 12% cited that they had resided for periods of 1-2 years and below one year, 11% for more than 15 years and lastly 9% had resided for a period of 10-15 years.

**Table 4.6: Occupation**

Occupation	Frequency	Percentage
Employed	56	16%
Self employed	167	48%
Jobless	124	36%
Total	347	100%

*Source: Researcher (2013)*

According to the respondents' occupation, 48% who were the majority indicated that they were self-employed, 36% were cited that they were jobless and 16% were employed.

### 4.3 Impact of Historical Events

#### Effects of Historical Events on the Outcomes of 2013 Kenya General Elections

**Table 4.7: Historical Events**

Events	Frequency	%
Yes	212	61
No	135	39
Total	347	100

*Source: Researcher (2013)*

61% who were the majority indicated that historical events of Kenya affected the outcomes of 2013 Kenya general elections while 31% cited not at all. In particular, post election violence witnessed in Kenya in 2007 as majority of respondents were much younger or not born in 1997 when Kenya had its first multi-party elections since the 1982 coup.

However, respondents remember vividly the post-election violence of 2007 and remember various ethnic communities being displaced from the Mathare informal settlements. Indeed, a UN report following the 2007 Post –election violence supports this assertion by the respondents. According to a report by the office of the UN High Commissioner for Human Rights<sup>105</sup>, violent reprisals targeting mainly communities of migrant workers perceived to be opposition supporters, were reportedly carried out by Government supporters and militia mainly in the slums of Nairobi (Kibera and Mathare) as well as other parts of the country. In addition, Mathare was also a recruiting hub for the Mungiki, who led retaliatory attacks against ethnic communities that did not support the government as well as following reports of kinsmen from their ethnic community being killed in the Rift Valley following the 2007 post –election violence. Further, many of these Mungiki members, recruited in Mathare according to the UN High Commissioner for Human Rights may have been killed extra judicially by police in subsequent years after the post-election violence. Indeed, some of the respondents noted that they did know some of the youth allegedly killed by police from 2007 to 2012. Some respondents showed anger at some of the public statements made by police that they were not involved in the killing of Mungiki members leading to some form of disdain to some of the presidential candidates in the 2013 General elections.

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<sup>105</sup>Report from OHCHR Fact-finding Mission to Kenya, 6-28 February 2008



Indeed, media articles have <sup>106</sup>indicated that in October 2007, police denied ever carrying out extra-judicial killings on Mungiki members. However, the government sponsored, Kenyan National Human Rights Commission in a report stated <sup>107</sup>that they had proof of the extrajudicial killings. The commission noted that in the last quarter of 2007 it had become concerned about the rise in cases of extra-judicial killings and disappearances. These according to the commission occurred after the formation of an elite police team mandated to 'eliminate members of the outlawed Mungiki sect.' The Programme, in collaboration with the Complaints and Investigations Programme, commenced investigations into the matter and released a preliminary report indicating that the Kenya Police appeared to be complicit in the extra-judicial executions of a large number of Kenyan citizens, depositing their bodies in various mortuaries in the country, while leaving others to be devoured by wild animals or dumping them in various locations such as forests, desolate farms, rivers and dams. The commission also noted that the findings of the preliminary report were transmitted to the President of the Republic of Kenya.

In addition, the neglect of services of the Mathare informal settlements by past governments also were looked upon by respondents as historical events that influenced their voting pattern in the 2013 General elections. Some of the respondents were adamant that they wanted change, they did not want leaders who make public pronouncements during election period on bringing development to the informal settlement only to rescind when they are in power.

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<sup>106</sup> Kenya police deny sect killings; BBC, October 24 2007 <http://news.bbc.co.uk/2/hi/africa/7059903.stm>

<sup>107</sup> Annual report for the financial year 2007-2008, Kenya National Commission on Human Rights pg 26.

**Table 4.8: Historical Events of Candidates**

Events	Frequency	%
Yes	184	53
No	163	47
Total	347	100

*Source: Researcher (2013)*

According to respondents 53% who were the majority argued that historical events of candidates contesting for presidency impacted on the outcomes of 2013 Kenya general elections whereas 47% cited not at all.

Depending on various villages in the informal settlement, the historical events of candidates did impact on their choice of a presidential candidate. In regards to Uhuru Kenyatta, respondents showed sympathy to him with some answering that it is wrong for him to face trial at the ICC court at the Hague noting that they believed that he is a scapegoat for the real perpetrators of the 2007 post election violence. However, some respondents noted that he should face trial at the court for the purpose of seeking justice especially for the victims of the post election violence- some of whom were from Mathare. In addition, Kenyatta being the son of the first president of Kenya and having being the more charismatic during campaigns as well as in televised presidential debates provided him with an advantage over the other presidential candidates, respondents noted. He was also youthful, and the respondents many of whom were below the age of 35 years old noted that they were optimistic that youth affairs especially for those with micro-enterprises in Mathare will benefit from Kenyatta's presidency. However, some

respondents noted that his family's wealth and especially the land that they own in the country, may have negatively affected the respondents choice of president.

In relation to Raila Odinga, former Prime Minister, responses were also varied. Some respondents viewed him as a mature leader who having worked in government and as one of those that fought for multiparty politics in the 1990's while he was in the opposition would have been much better suited to take the presidency. However, for some of the respondents his handling of the Post election violence had a negative impact, they believed that he had a bigger responsibility in stopping the post election violence but he never called for an immediate cessation of hostilities once the violence began but that he allowed it to drag on for some weeks until mediation began.

In relation, to other presidential candidates some of the respondents, especially male above the age bracket of 35 years old, felt that Kenya was not ready yet for a woman president. However, they felt that Martha Karua's presidential candidacy opened up positive discussion on the role of women in politics. They also noted that Martha Karua was a good candidate given her years in both opposition and government and her principled stance on issues.

At least 47 percent of the respondents said that the past of presidential candidates especially those affecting the 2007 post election violence did not affect how they voted for the presidential candidates. Many were indifferent to their pasts noting that all politicians had dark pasts. They also reckoned that issues of the ICC that were being highlighted prior to the 2013 General Elections were being overemphasized over development issues. For these respondents the development agenda for their constituency and largely the country played an even bigger role to who they would vote for.

Below are some of the Rêponses from the respondents

**Table 4.9: Direction of Effect**

Effect	Frequency	%
Positive	208	60
Negative	139	40
Total	347	100

*Source: Researcher (2013)*

On the effect, 60% of the respondents who were the majority argued that historical events of candidates contesting for presidency impacted on the outcomes of 2013 Kenya general elections positively while 40% indicated that they affect negatively.

**Table 4.10: Extent**

Extent	Frequency	%
Very great extent	42	12
Great extent	90	26
Moderate extent	104	30
Little extent	80	23
No extent	31	9
Total	347	100

*Source: Researcher (2013)*

According to the respondents 30% who were the majority indicated that the historical events of candidates contesting for presidency impacted on the outcomes of 2013 Kenya general elections to a moderate extent, 26% to a great extent, 23% to a little extent, and 9% to no extent.

extent, 12% cited to a very great extent and 9% indicated that the historic events did not affect at all.

Indeed, from the above responses, the power of the mass media and the use of public statements has been brought to the fore. One of the functions of mass media during an election is political persuasion which is an attempt to change people's behavior and attitude through communication. Political parties and in the 2013 General Election, political coalitions such as the Jubilee Coalition and CORD as well as their candidates used the media and other communication tools to convince the public to accept their political beliefs and in this case their manifestos but using the fishing line of the Kenyan cases to hook their audiences. Indeed, it is used worldwide by politicians and even governments, Propaganda is a form of persuasive communication which involves the transmission of opinions, facts and information that are aimed at benefiting the communicator. Political leaders use persuasion and propaganda as their most important tools in their profession.<sup>108</sup> During elections, presidential candidates tend to have control over the time that is allocated for their speeches and announcement. Also, presidential candidates can create their own campaign organizations, separate from that of their parties which deploy persuasion and propaganda techniques. Kenyatta was able to do this by successfully bring in local artists and youth celebrities from the broad sphere of society. In addition, his TNA offices unlike other parties was headquartered in the estates of the middle and medium earning Kenyans, reachable to both the low income earners as well as the middle and medium income earners, who in Kenya form the majority of the electorate. Through

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<sup>108</sup>Dr. Ozonnia Ojielo is an economist with the Kenya School of Monetary Studies, This article was written in collaboration with Dr. Moses Sichei currently serving as the Director of Research at the Commission for Revenue Allocation (CRA) and Chris Milner a Professor of International Economics at the University of Nottingham.

television, radio and print spots as well as high colour billboards, politicians were able to influence and to some extent white wash their pasts for the creation of public opinion through agenda setting. That news media shape public opinion through priming is one of the most widely accepted results in political behavior. Indeed, this was evident when politicians began purchasing airwaves for the purpose of influencing the electorate. Mediamax for example is owned by close associates of Mr Kenyatta. The standard media group's majority shareholding is owned by close associates of former president Dan Arap Moi. Williams notes that one of the marks of a successful politician is when he knows when to support or resist public opinion.<sup>109</sup>

**Table 4.11: Level of Agreement on Injustices**

Statement	No extent		Little extent		Moderate extent		Great extent		Very great extent	
	F	%	F	%	F	%	F	%	F	%
Land grabbing	14	4	69	20	52	15	108	31	104	30
Extrajudicial killings	52	15	28	8	62	18	109	31	97	28
Fueling ethnicity	10	3	66	19	62	18	90	26	118	34
Scandals	56	16	90	26	97	28	66	19	38	11
Political shifts	38	11	90	26	62	18	87	25	69	20

*Source: Researcher (2013)*

On the cases of injustices 30% of the respondents indicated that land grabbing influenced outcomes of 2013 Kenya general elections. However, what was interesting

<sup>109</sup> Williams, Michael C. (ed.), (2007). *Realism Reconsidered: The Legacy of Hans Morgenthau International Relations*, Oxford: Oxford University Press pg 78.

the study, was the number of respondents who thought extra judicial killings influenced the elections to a great extent at least 28 % cited that extrajudicial killings influenced the elections, I will expound further on this later in this paper. Another 34% argued that fueling ethnicity influenced outcomes of 2013 Kenya general elections to a very great extent, 11% agreed that scandals impacted the outcomes to a little extent and lastly 20% of the respondents indicated that political shifts influenced outcomes to a great extent.

These results on extra-judicial killings by the respondents did not come as a surprise. That 28 percent of the respondents agreed that extra judicial killings were an injustice, is earlier noted because of what they had witnessed firsthand in their informal settlements. Extrajudicial killings of residents especially the youth was etched in their minds. Public Statements by government officials in 2007 suggesting an official policy to ruthlessly deal with suspected Mungiki members and other criminals, led to police raids in Mathare, spreading fear among residents in particular youth below the age of 25 years. During Madaraka day celebrations in 2007, President Mwai Kibaki warned that Mungiki sect members should expect no mercy. Two days later, on June 3 2007, about three hundred suspected Mungiki members were arrested across Nairobi including Mathare and at least twenty killed when they were reportedly caught administering oaths to recruits.<sup>110</sup>

Mathare as earlier noted was one of the areas that the Kenya National Commission on Human Rights had mentioned as having experienced extrajudicial killings. Indeed, in a follow-up<sup>111</sup> report in 2008, the report noted that that extrajudicial killings of Mungiki members were alarming in some periods particularly in the month of June 2007 which coincided with the time the government announced that it had

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<sup>110</sup>KNHCR Follow-up Report on:Extra-Judicial Killings and Disappearances: August 2008. Pp 6

<sup>111</sup>Ibid

heightened its crackdown on the proscribed Mungiki sect. This crackdown was climax by the 'infamous' police raid in Mathare's Kosovo area on June 7 2007. According to report on the evening of June 7 in Mathare's Kosovo area which was one of the target areas for this study, a total of ten youth were killed all of whom were from the Kikuyu ethnic community. Two weeks later on June 22 2007 <sup>112</sup>another 26 youth from the same ethnic community were killed by police in the alleged raid in the informal settlement.

And it was not only in 2007, that suspected cases of extra-judicial killings were reported in Mathare. In May 4 2013, three society groups<sup>113</sup>, the Independent Media Legal Unit, the Rights Promotion and Protection Centre and the Muslim Human Rights Forum held a peaceful demonstration in Kasarani constituency where Mathare is situated to protest what they termed as continued killings by police. This particular demonstration followed the killing on April 2013 of Kenneth Mwangi, a popular youth that played for the Mathare United Football club. The cases of the extra-judicial killings influenced to a big extent the presidential candidate that the respondents voted for with respondents noting that it would be a candidate who would be sympathetic to the pleas.

On Ethnicity, which the largest percentage of respondents argued influenced the outcomes of 2013 Kenya general elections, residents of Mathare have experienced division and suspicion that ethnicity can bring to a locality. Indeed, this is part of the reason that I selected Mathare for the study. As earlier noted in this paper, there are several predominant ethnic groups living in the informal settlement of Mathare namely the Kikuyu, Luo, Kamba and Luhya. The largest of these are the Kikuyu and Luo.

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<sup>112</sup>ibid  
<sup>113</sup>Protests in Kasarani over extra-judicial killings: Capital FM- May 4  
<http://www.capitalfm.co.ke/news/2013/05/protests-in-kasarani-over-extra-judicial-killings/>



communities. Ethnic tensions and conflicts in Mathare has been a problem the area has experienced over past years and are often social economic or politically instigated.

For example in the 1990s, Mathare 4A village went through a pilot upgrade under the coordination of the Ministry of Public Works. This initiative faced opposition from community members due to the evictions that would pave way for new infrastructures.<sup>114</sup> However, growing tensions cropped up during the allocation process as it was perceived that one ethnic community was favored with that ethnic community driving out other ethnic communities from the project. Today, according to a report by Groots an NGO working in the area the upgraded houses are predominantly occupied by one ethnic community. Indeed, vigilantly groups operating in Mathare, reflect the ethnic division in this area. The Mungiki represent the Kikuyu ethnic community while the Taliban members from the Luo ethnic community- both groups have been outlawed by the government of Kenya and have been used by politicians to push their political agendas among the residents. The existence of these groups has also led to further ethnic tensions in the villages in Mathare.

For example in 2006, Mathare was damaged by violence between rival gangs Taliban and the Mungiki, following a disagreement on 'taxes' charged by the Mungiki illegal brewers in Mathare. The Taliban hired by the illegal brewers confronted the Mungiki leading a vicious battle between the two groups that saw the burning of hundreds of homes and at least the deaths of ten people<sup>115</sup>. In addition, following controversial presidential elections that took place on December 27, 2007, gangs

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<sup>114</sup> Groots Kenya: Synopsis on the Post Election Violence Situation In Mathare Slums, January 2008.

<sup>115</sup> Nyairo Bosire, "Calm returns to Nairobi slum after days of violence", Reuters: 09 November 2007, <http://reliefweb.int/report/kenya/kenya-calm-returns-nairobi-slum-after-days-violence>

Kikuyu and Luo youth engaged in violent fights and burned more than 100 houses<sup>116</sup>. The bridge still famous even today divided the two ethnic communities during the 2007 post-election violence. On one side of the bridge is the Mother Teresa road and on the other side is Mathare North.

#### 4.4 International Legal Procedures

##### Impact of International Legal Procedures

**Table 4.12: Impact of ICC on the General Elections**

Events	Frequency	%
Yes	232	67
No	115	33
Total	347	100

*Source: Researcher (2013)*

According to the respondents 67% who were the majority argued that the ICC cases had an impact on the outcomes of 2013 Kenya general elections whereas 33% indicated that it did not have an impact. Majority of the respondents noted that the criminal cases against humanity facing Uhuru Kenyatta and William Ruto helped in tying the former rivals together. Respondents also noted that the rivalry between the Kikuyu and the Kalenjin ethnic communities witnessed in 2007 General elections was not there at the informal settlement level. Respondents also acknowledged press reports by renowned Kenyan political analyst, Mutahi Ngunyi on what he coined as the “tyranny of numbers”.

<sup>116</sup> Aarhus Paige, “The Mungiki, The Taliban, And MeGetting To Know Kenya’s Most Dangerous Gangsters”, *vice magazine* 9 January 2012

According to the analyst, the “tyranny of numbers<sup>117</sup>” makes a probable claim that is, that Kenya’s voting is historically influenced by ethnicity. The Jubilee Alliance coalition of parties led by Uhuru Kenyatta, who is facing trial at the ICC and William Ruto also facing trial at the ICC began, according to the hypothesis, with such a large numerical advantage the effort needed to secure an electoral victory was infinitesimal small, details that respondents also agreed with. Further, according to the hypothesis presented by the political analyst, this inevitable victory comes from the Jubilee Coalition’s ethnic vote of 6.2 Million (or 43.2% of the total vote). This number is basically a totting up of the registered Kikuyu and allied communities that form GEM and the Kalenjin voters. Following the March 4 2013 elections, the analysts hypothesis proved correct to some extent. The views supported by some of the respondents also were correct, that Jubilee Alliance leaders were brought together because of the ICC rhetoric at the time and since the two leaders, Uhuru and Ruto represent, the two largest ethnic communities in Kenya, their common relationship likely pegged on the ICC cases would have a considerable impact on the voting pattern of the March 4 2013 General Election. Indeed, this view was reflected across the country with continuous ICC rhetoric from politicians and diplomats alike during the campaign period prior and after to the 2013 General elections.

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<sup>117</sup> Maina Wachira, inside the tyranny of numbers numerology: The African Executive, 27 April 2013

**Table 4.13: Extent of Impact**

Events	Frequency	%
Very great extent	121	35
Great extent	42	12
Moderate extent	128	37
Little extent	35	10
No Extent	21	6
Total	347	100

*Source: Researcher (2013)*

On the level of impact 37% cited that the ICC impacted on the outcomes of 2013 Kenya general elections to a moderate extent, 10% argued it had impact to a little extent, 12% indicated to a great extent, 35% to a very great extent and lastly 6% said that it had no impact.

Respondents also believed that there would be consequences for Kenyan in relations with other states outside Africa. Respondents were reacting to public statements made by senior US Foreign Affairs officials as well as diplomats from the UK and other countries, that “business would not be as usual” if both Uhuru Kenyatta and William Ruto were elected. Indeed, in February 2013, former US Assistant Secretary of State for African Affairs<sup>118</sup>, Johnny Carson warned Kenya of unspecified consequences should Uhuru and Ruto both facing trial at the ICC become president and deputy respectively. During a telephone call on February 07 2013 with Journalists on the 2013 Kenyan Elections, Carson is quoted as saying:

<sup>118</sup>Joselow Gabe, US official says Kenya’s elections has consequences: Voice of America, 7 February 2013

*President Obama clearly stated that the choice of who will lead Kenya is up to the Kenyan people, but it is also important to note that choices have consequences. We live in an interconnected world and people should be thoughtful about the impact that their choices have on their nation and on the world.*<sup>119</sup>

Statements that the Government of Kenya, at the time, did not take lightly. Kenyan Minister for Foreign Affairs at the time Prof Sam Ogeri sent a protest note to the US embassy in Nairobi seeking "clarification" over the U.S's position on the elections. He also summoned European Union diplomats<sup>120</sup> based in Nairobi to express concern over what the government at the time claimed to be attempts to "meddle" in Kenya's internal affairs. According to respondents, such statements by western nations only aided in cementing support at the village level in Mathare for the two candidates, among residents from Kenyatta's and Ruto's ethnic community. For some of the respondents, it helped galvanize anti-imperialistic sentiments among them- sentiments that were also expressed by Uhuru Kenyatta and William Ruto during the campaigns prior to the 2013 General elections<sup>121</sup>.

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<sup>119</sup>United States Diplomatic Mission to South Africa: Briefing on the upcoming General Elections  
Assistant Secretary, Johnny Carson. February 7  
[http://southafrica.usembassy.gov/mediahub\\_av\\_carson\\_20130207\\_kenya.html](http://southafrica.usembassy.gov/mediahub_av_carson_20130207_kenya.html)

<sup>120</sup> Back off, Kenya tells EU Envoys: Star Newspaper, pp1, 12 February 2013

<sup>121</sup> Ekwo Uchenne, Uhuru Kenyatta's victory and Africa's renaissance, The African Executive, 13-20 edition

**Table 4.14: International Legal Procedures**

Statement	No extent		Little extent		Moderate extent		Great extent		Very great extent	
	F	%	F	%	f	%	f	%	f	%
The ICC suspects were accused unjustly	38	11	69	20	80	23	73	21	87	2
The cases were politically framed to favor some candidates	49	14	87	25	59	17	97	28	56	1
The ICC cases boosted some of the accused political standing and favored them	73	21	90	26	56	16	69	20	59	1
Kenyans were against the cases from the start	56	16	73	21	90	26	62	18	66	1
Witnesses were coached to sympathize with the West	80	23	56	16	73	21	49	14	90	1

*Source: Researcher (2013)*

On the international legal procedures 25% of the respondents who were a major cited to a very great extent that the ICC suspects were accused unjustly, 16% also agreed to a very great extent that the cases were politically framed to favor some candidates, 17% cited that the ICC cases boosted some of the accused political heights and favored them to a little extent, 19% moderately argued that Kenyans were against the ICC from the first and lastly 26% stated that witnesses were coached to sympathize with the West to a very great extent.

On the impact of the ICC proceedings majority of the respondents argued that there was a real fear that if charges are dropped for suspects of one ethnicity and confirmed for those of another, ethnic tensions could increase sharply, regardless of the extent.

legal merits. They still argued that the ICC's decisions would continue to play a pivotal role in Kenya's political process, especially post 2013 election. Majority indicated that the court appeared cognizant that these could not be viewed by many Kenyans simply as legal decisions and that the timing and framing of proceedings and rulings would inevitably have an impact in heightening or tamping down ethnic tensions. According to them they pointed out that the ICC would recognize that public statements warning suspects and other politicians not to politicize the judicial proceedings could have a negative impact on the image of the court if no action is seen from them.

#### 4.5 Political Campaigns

**Table 4.15: Funding of Political Campaigns**

Options	Frequency	%
Yes	302	87
No	45	13
Total	347	100

*Source: Researcher (2013)*

According to the respondents 87% who were the majority supported the funding of political campaigns whereas 13% did not support. Majority of the respondents argued that campaign funding facilitated maximum voter turn-out.

**Table 4.16: Political Campaigns**

Statement	No extent		Little extent		Moderate extent,		Great extent		Very great extent	
	f	%	f	%	f	%	f	%	f	%
The funds were siphoned from the Kenyan citizens through taxes	42	12	49	14	49	17	125	36	73	
So much was spend during the campaigns which I feel it was a total waste and could have been used in economic favor of our Nation	-	-	28	8	38	11	139	40	142	
Campaigns are source of inhuman acts	3	1	21	6	69	20	100	29	153	
Campaigns should be regulated and the candidates should use their own funds	38	11	52	15	14	4	111	32	131	
Politicians should be cautious with what they say as it could fan violence and other vices	-	-	62	18	76	22	108	31	101	

*Source: Researcher (2013)*



On political campaigns 36% of the respondents who were a majority indicated to a great extent that the funds used in the campaigns were siphoned from the Kenyan citizens through taxes, 40% a majority argued to a great extent that a lot of funds were wasted during the campaigns which could have been used to boost the economy of the country, 44% the majority pointed out to a very great extent that campaigns are source of inhuman acts, 38% also a majority to a very great extent agreed that campaigns should be regulated and the candidates should use their own funds and lastly 29% argued to a great extent that politicians should be cautious with what they say as it could fan violence and other vices.

Indeed, clear and fair regulation of campaign financing is an important means for the government to balance the rights of citizens to participate in public affairs and the need for equity among candidates and parties. State practice indicates that political parties should be assured that they will be able to compete with each other on an equal basis and all political contestants should have an equal period of time in which to campaign.<sup>122</sup>

Pursuant to Article 88 of the constitution, the IEBC is responsible for the regulation of the amount of money that may be spent by or on behalf of a candidate or party in respect of any election. The absence of IEBC regulation of campaign finance deepened the lack of control over campaign spending, allowing for an unfair advantage for wealthy candidates and the bigger parties. A new political finance regime could have also bridged the funding gap among political parties, curbed corruption, limited the influence of special interests and the impact of money on the elections, and forced parties

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<sup>122</sup>Opanga K, 'Ruto may soon learn The Hague is no movie', *Daily Nation*, 6 August 2011, <http://www.nation.co.ke/oped/Opinion/Ruto+may+soon+learn+The+Hague+is+no+movie+/-/440808/1214576/-/item/0/-/1fmwihz/-/index.html>.

to be more accountable to their members. The absence of campaign finance regulation, prior to the March 4 2013 General elections especially in the presidential race, was exacerbated by the absence of a fully enforced campaign period that penalized candidates and parties who lacked the resources to run a long and expensive pre-campaign.

Disparities in financial resources continued to prevent a level playing field through the end of the campaign.<sup>123</sup> While the wealthiest candidates were campaigning using helicopters, others struggled to afford nationwide transportation, billboards, media space, and televised advertising. Party affiliation gave candidates access to the party's resources, thereby increasing their chance to be elected, especially in areas considered as parties' strongholds. This feature of much of Kenya's political geography explains why many party primaries were so strongly contested and some outcomes disputed with last-minute party-hopping that offered losing candidates in one party a last chance with another. Parties were also massively financed by allies and business associates of the highest profile individuals in the political parties. In the existing system, a candidate with money and/or the support of a party has a significant comparative advantage over an independent candidate with no money. Several Kenyan organizations have reported on the particular disadvantages facing women candidates, who frequently lacked the resources of male contenders and who often did not receive help from their parties.<sup>124</sup> Carter Center observers reported that candidates for women's seats particularly suffered

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<sup>123</sup>Njiraini J, 'ICC process hurts Kenya's credit rating', *The Standard*, 11 April 2011, <http://www.standardmedia.co.ke/InsidePage.php?id=2000033055&cid=457&>.<sup>126</sup> Opanga K, *op. cit*

<sup>124</sup>Ochieng DO & DS Majanja, 'Sub-Saharan Africa and WTO Dispute Settlement: The Case of Kenya', in Shaffer GC & R Meléndez-Ortiz (eds), *Dispute Settlement at the WTO: The Developing Country Experience*. Cambridge: Cambridge University Press, 2010.

from the lack of party funding, especially considering they had to campaign in the n larger countywide constituencies.

#### 4.6 Impact of Media Reports

**Table 4.17: Media Reports**

Options	Frequency	%
Yes	177	51
No	170	49
Total	347	100

*Source: Researcher (2013)*

According to the respondents 51% who were the majority argued that media reports had an impact on the 2013 Kenya general elections while 49% stated it did not. Kenya's constitution guarantees media freedom and prohibits the state from interfering in those rights. Indeed, intense media coverage of the electoral campaign, mainly concentrated around the two parties that were considered front-runners by various pollsters. The attention given to the two main presidential contenders, Raila Odingo of the CORD coalition and Uhuru Kenyatta of Jubilee Alliance coalition, and their financial capacity to occupy the media did not create a level playing field for the other candidates from smaller parties.

The numerous public opinion polls reported during the campaign prepared 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, 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. Prior to the 2013 General Elections, and likely in reaction to avoiding to fan violence as had been the case in 2008, Kenyan media, guided by the Media Council, signed onto guidelines on media coverage. The guidelines were signed by more than 15 media houses and institutions committed themselves to providing quality and constructive coverage of the elections. Media throughout the election period were focused on spreading peace messages, often to the detriment of the news. The media played an important role in spreading violence in 2008, which created a sense of guilt inside the profession.<sup>125</sup>

As a result, media houses were overly cautious in their coverage, focusing on the prevention of violence to such an extent that they censored themselves while reporting news. Incidents and irregularities were often softened in the media due to fear of strong reaction from the public and of being labeled as inflammatory.<sup>126</sup> Therefore, many irregularities that should have been reported in the media were heard for the first time only after the Supreme Court. The media should be given credit for engaging in voter education, especially the radio stations, which called on members of the public to register and cast a vote in order to exercise their constitutional rights and elect credible leaders. Nevertheless, Kenyan media could also be criticized for placing too much emphasis on peace messaging and the presidential candidates at the expense of candidates for other elective positions.<sup>127</sup>

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<sup>125</sup>Mwagiru M, 'The Missing Link in the Study of Diplomacy: The Management of the Diplomatic Secret and Foreign Policy', *The Journal of Language, Technology & Entrepreneurship in Africa*, 2, <http://www.ajol.info/index.php/jolte/article/viewFile/52001/40636>.

<sup>126</sup>Mutunga W, 'Kenya's Constitutional Transition: The Challenge of University, State, Society Relations', public lecture delivered at University of Nairobi, 21 August 2012 as part of Judicial Marches week.

<sup>127</sup>KNBS (Kenya National Bureau of Statistics), *Economic Survey (2011)*. Nairobi: Government Printer, 277.

Marc Stears, "Review Article: Liberalism and the Politics of Compulsion," *British Journal of Political Science* 37 (2007): 543

**Table 4.18: Effects of International Media Reports**

Effect	Frequency	%
Positive	118	34
Negative	229	66
Total	347	100

*Source: Researcher (2013)*

Concerning the effects of international media reports 66% of the respondents who were the majority indicated that international media reports had a negative impact on the 2013 Kenya general elections. Respondents noted that international media reports focused on the possibility of a recurrence of the 2007 post election violence and did not indicate the positive achievements made by both Kenyans as well as the government in countering the violence. However, 34% cited it had a positive impact in portraying Kenya as an advanced democratic state in a region riddled by conflict.

One of the most reported events by international media in the absence of violence in the country was the presidential debate. Indeed, this was the first in the horn of Africa region. A positive in creating transparency in the electoral process. The debate was aired live in all radio and television stations across the country. The idea behind the presidential debates in Kenya were largely borrowed from the U.S.

In the US, the emergence of television changed the image of political campaigns as it made a mass audience available to presidential candidates for the first time. On 26 September, 1960 the first presidential debate was aired on the television. Senator John F. Kennedy and Vice President Richard M. Nixon sat in a Chicago television studio, along with four news people from ABC, CBS, and NBC who were to question the candidates

about domestic policy. This televised debate influenced the election and Kennedy became the next president.<sup>128</sup> Presidential debates are major events that provide candidates with an opportunity to sell their policies and agenda to the electorate. Unlike campaigns, these debates are highly visible events that can significantly improve a candidate's position in the polls.

In Kenya, presidential candidate Aduba Dida is remembered for the comic relief that he provided while responding to questions during the televised presidential debate. Uhuru Kenyatta was remembered for his eloquence in answering the questions and his readiness to wear makeup which made him more TV presentable than his main opponent, Raila Odinga. Indeed, John F. Kennedy is believed to have won the presidential debate because, like Kenyatta, he had accepted to wear makeup. An overall conclusion from Bernard Williams' volume on the Great Debates of 1960 between John F. Kennedy and Richard Nixon was that the debates mattered whether people watched them or not.<sup>129</sup> There was so much discussion, especially of Kennedy's performance in the first of the four debates, that a social reality took shape holding that Kennedy had "won" the debates, and this perception very likely was an important factor in the outcome of a very close election. An opinion poll carried out by Ipsos Synovate after the 2013 Kenya presidential indicated that 40 percent of Kenyans who watched the presidential campaign would vote for Uhuru Kenyatta while 33 percent said they would vote for Raila Odinga. Peter Kenneth would get 7 percent while Martha Karua 2 percent.<sup>130</sup> In previous polling surveys, Raila was always in the lead followed closely by Uhuru but after the presidential debate, pe

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<sup>128</sup>Barkan, Joel D. 2013. "New Forces Shaping Kenyan Politics." *CSIS: African Notes No. 1*. Washington: Center for Strategic and International Studies.

<sup>129</sup>Bernard Williams, *In the Beginning Was The Deed: Realism and Moralism in Political Argument* (Princeton: Princeton University Press, 2005), pp. 1-3.

<sup>130</sup>Allafrica.com

indicated that Uhuru surpassed Raila. Millions of people in Kenya watched the debate, discussed them, and read and watched analysis of the candidates' performances. Indeed, international media carried several stories on these debates, especially on the questions of the ICC and land issues.

**Table 4.19: Extent of Effect of international media reports**

Extent	Frequency	%
Very great extent	69	20
Great extent	56	16
Moderate extent	97	28
Little extent	79	21
No extent	52	15
<b>Total</b>	<b>347</b>	<b>100</b>

*Source: Researcher (2013)*

On the extent of effect 28% the majority stated that the impact was to a moderate extent, 21% argued that the impact was to a little extent, 20% stated the effect was to a very great extent, 16% agreed that the effect was to a great extent and lastly 15% argued there no effect at all.

**Table 4.20: International Media Reports**

Statement	No extent		Little extent		Moderate extent		Great extent,		Very great extent
	F	%	F	%	F	%	f	%	f
The information was malicious and of no importance	111	32	49	14	35	10	83	24	69
They favored one candidate	87	25	10	3	42	12	139	40	69
They aimed at triggering election violence	69	20	76	22	62	18	73	21	66
The reports were fair and vital	125	36	42	12	7	2	118	34	56
The international reports focused on the ICC and other vices than the good will of Kenyans to peaceful elections	111	32	38	11	10	3	139	40	49

*Source: Researcher (2013)*

On the international media reports 20% of the respondents who were the major argued that the information was malicious and of no importance, 20% of the respondents stated that they favored one candidate to a great extent, 19% indicated that they aimed triggering election violence to a little extent, 16% cited that the reports were fair and vital to no extent and lastly 14% argued that the international reports focused on the ICC and other vices than the good will of the Nation and its associates to a great extent.



Indeed, respondents noted that they accessed international media reports through the internet as well as through social networking sites such as twitter.

#### 4.7 Impact of Social Media in the 2013 General Elections

Social Networking Sites (SNS) are the main form of communication for social media and thus the definition of SNS applies to Social media. Boyd and Ellison define social media networking sites as internet-based applications that allow users to develop a public profile within a closed system, have a list of users whom they have a relation with, and are able to view their own friends list and that of others within the system.<sup>131</sup> This is generally the model that social media follow. They include Facebook, Twitter, MySpace, blogs, and YouTube among others. Zambarnardi posit that the growth of online political behavior has been partly facilitated by the recent emergence of new interactive, media rich websites.<sup>132</sup> The ability to express political views and opinions online plays an important role for social media in campaigns. Social media allow users to not only seek information but also interact with others through online expression such as posting political commentaries on blogs and social network sites and sharing multimedia commentary.

In past campaigns, Facebook users have expressed themselves politically in many ways, such as making online donations, encouraging friends to vote, or posting graphics or status updates expressing political attitudes and opinions. Twitter and blogs have been used by candidates and voters to comment on social and political issues, share information and encourage participation. Uhuru Kenyatta's campaign team was able to

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<sup>131</sup>Canada- Kenya Relations- High Commission of Canada in Kenya  
[http://www.canadainternational.gc.ca/kenya/bilateral\\_relations\\_bilaterales/canada\\_kenya.aspx?menu\\_id=7](http://www.canadainternational.gc.ca/kenya/bilateral_relations_bilaterales/canada_kenya.aspx?menu_id=7)

<sup>132</sup>Zambarnardi, L. (2011). "The Impotence of Power: Morgenthau's Critique of American Intervention in Vietnam". *Review of International Studies* 37 (3): 1335-1356.

tap into this successfully capturing a large youthful constituency that better communicated through social media. In addition, it also provided the campaign team with the ability to counter any negative stories from international media streams as well as bloggers who may have been based in countries outside of Africa.

Indeed, the Jubilee Alliance campaign team took advantage of social media such as Facebook which allows its members to form groups based on a shared topic or theme and connect with others of the same interest, quickly growing its constituency. Once members join a Facebook group, they can post to the group's wall, engage others on an open discussion board, and share photographs, videos and other media files. This provided Uhuru Kenyatta with the platform to engage on a more personal basis with his target audience. Opanga in a study investigating the use of Facebook for campaigning by Congressional candidates in the 2006 U.S elections found that candidates who campaigned on Facebook in 2006 won a larger share of the vote than candidates who did not campaign on Facebook when controlling for all other variables.<sup>133</sup> In addition, incumbents added 1.1% to their vote share by doubling the number of supporters on Facebook, while open-seat candidates added 3% by achieving that same increase. Hill and Hughes also believe that the Internet reinforces beliefs that are already developed rather than fundamentally changing people and their attitudes.<sup>134</sup> The Internet is reinforcing the already present political attachments, providing additional data and information for voters who are seeking to bolster their vote choices. Again, the Internet is enabling voters to find out additional information, not transform them.

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<sup>133</sup>Opanga K, 'Ruto may soon learn The Hague is no movie', *Daily Nation*, 6 August 2011, <http://www.nation.co.ke/oped/Opinion/Ruto+may+soon+learn+The+Hague+is+no+movie+//440808/1214576/-/item/0/-/lfmwihz/-/index.html>.

<sup>134</sup>Zambernardi, L. (2011). "The Impotence of Power: Morgenthau's Critique of American Intervention in Vietnam". *Review of International Studies* 37 (3): 1335-1356.

In Kenya today, most Kenyans access internet through their phones, respondents in the study had noted that phones played a major role in allowing them to access the internet as well as stories written by foreign journalists. However they also noted that the internet provided them with the ability to follow a few of the presidential candidates prior to the 2013 General elections. Some of the presidential candidates that had embraced social media included Uhuru Kenyatta, Peter Kenneth and Martha Karua. However, an interestingly diplomats were also engaging through social media such as the British High Commissioner.

This demonstrates that both politicians and diplomats had begun to use social media as an avenue of supplementing traditional media outlets and engaging the internet as part of a tool that enabled them to engage with Kenyans. As opposed to 2007 elections 2013 elections were held during a period when Kenya was rated as the 2nd most tweet nation in Africa. According to a survey by Portland Communications, Kenyans had an average of 2,476,800 tweets in a period of three months placing it second after South Africa which had 5,030,226 tweets. Also, statistics from socialbakers.com indicate that the number of Facebook users in Kenya is about 2,007,960 with the majority of users lying between the ages of 18-24. The significance of this is the proof that millions of Kenyans are getting online. By CCK's stats, more than 10 million Kenyans access the internet, majority of these through their mobile phones.

All presidential candidates in the 2013 General elections had a significant number of supporters and followers on the two main social networking sites, Facebook and Twitter. In fact, excluding media houses and celebrities, they are the most liked

followed Kenyans on Facebook and Twitter respectively.<sup>135</sup> The main presidential candidates had official campaign websites apart from their social media accounts. The 2013 elections had eight presidential candidates namely Peter Kenneth, Martha Karua, Musalia Mudavadi, Raila Odinga, Uhuru Kenyatta, Aduba Dida, Paul Muite and James Ole Kiyiapi. However, of the eight candidates, Narc Kenya presidential candidate Martha Karua had the largest following on Twitter (@MarthaKarua) with 63,000 followers on Twitter whereas Eagle Alliance candidate Peter Kenneth had the most following on Facebook with 165,000 likes on his page.

The election winner Jubilee alliance candidate, President Uhuru Kenyatta equally had a significant following on both Facebook and Twitter with The Guardian naming him among the top ten most active African politicians on social media. These three candidates carried intensive campaigns on these two social networks in bid to reinforce their support base and also create new constituents of followers. The scramble for the youth votes saw presidential aspirants intensify their campaigns on social networking sites, making them become official forums to address and appeal to young people. On the sites, they posted updates about their activities, public statements they released to the media and where they were planning to go hold campaign rallies. Social media consultant Nanjira Sambuli notes that the Kenyans online are very active participating in conversations on policies and governance and discussing issues with people who have different viewpoints. She asserts that this will have an impact on the political culture of the country in the long run. Although social media provides a significant reach of the Kenyan electorate online, it has

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<sup>135</sup>Mathenge Oliver and Nzau Musau: US warns of ICC consequences- The Star Newspaper- February 8 2013 pp 1  
Modern Ghana (2013). *Ghanaians in UK Protest Ghana Elections 2012 Results*:  
<http://www.modernghana.com/news/457913/1/ghanaians-in-uk-protest-ghana-elections-2012-resul.html>

not penetrated enough to replace the traditional methods of communication. According to Human Rights Watch, education, income, ethnicity, age and urbanization are all potential influences on a candidate's Internet use.<sup>136</sup>

#### 4.8 Conclusion

The use of public statements has been in existence in Kenya since independence. From the period of President Jomo Kenyatta in 1964 to his son Uhuru Kenyatta in 2013, politicians over the 50 year period have appealed to the masses, their electorate through carefully worded statements. The statements have been made from podiums during electoral campaigns to press conferences, interviews and press statements e-mailed to newsrooms. One of the issues that this research paper set out to find out was whether statements influence voters and if they do whether statements made by western states can change the perceptions and views of voters towards a presidential candidate. Having picked a sample population from Mathare, a diverse informal settlement in Nairobi with close to a million inhabitants, findings indicate that indeed, statements do influence voters. However, the statements that have the most impact are those that are made by local leaders in particular those that appeal to a pressing need among the electorate such as past injustices that they perceive were leveled on them or those that appeal to the ethnic composition of the electorate. For instance, the target population largely came from two ethnic communities, the Kikuyu and the Luo. Responses by the target population indicated that ethnicity did play a role in the 2013 general elections especially in regards to the ICC cases which were a central theme to campaigns. However, research findings also indicated that although, statements made by western governments and

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<sup>136</sup>Human Rights Watch (2013). "Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya." New York: Human Rights Watch.

diplomats insinuating consequences for Kenya when an ICC suspect becomes president had an effect at the national level, with debates on national papers and in campaign rallies, at the village level, these statements did not have such impact. It seems that the electorate at the village level would rather listen to what their local political leader says or preferred presidential candidate to the diplomat or foreign government. Local media also had a larger impact on the respondents than international media. Indeed, while international media focused on the ICC question and the chances of ethnic violence in the 2013 general elections, findings indicate that although respondents may have read some of the news articles they were not as affected by the international media as they were by local press reports. Findings therefore do indicate that public statements do influence the electorate, however at different levels. At the grass roots statements by foreign governments may not have as strong an impact as they do at the national level. Perhaps due to low education levels at the village level or pressing issues such as security, food and unemployment. But, the impact of statements by diplomats at the national level cannot be ignored, as they do influence the politicians as was witnessed in the 2013 general elections, where CORD capitalized on these statements to push the agenda that Kenyatta and Ruto were unfit to run for president and deputy respectively. Conversely, these statements by the foreign governments and diplomats helped cement further the relationship between Ruto and Kenyatta bringing them together to form a team that would later win the presidency.

## CHAPTER FIVE

### SUMMARY, KEY FINDINGS AND RECOMMENDATIONS

#### 5.1 Introduction

This chapter contains summary, key findings, recommendations and a scholarly suggestion of other areas for further research of the study under research.

#### 5.2 Summary of Key Findings

In the run up to the Kenyan general elections of March, 2013, there was debate on whether or not to allow suspects facing trial for crimes against humanity during the 2007/2008 Post Election Violence at the International Criminal Court to vie for presidency or political office. The International Criminal Court's (ICC) charges against Uhuru Kenyatta and his running mate William Ruto, provided both political and legal debate on their candidacy and whether it was even allowed by the constitution. The ICC charges did indeed influence electoral campaigns and the general pre-election situation in Kenya. One of the ways which this study discussed in detail were public statements that had been made by foreign diplomatic missions and officials on the ICC and the 2013 General elections.

This study aimed at investigating the role of Public Statements by Western Diplomatic Missions as well as officials of these countries on the General Elections of Kenya. The data used for this study was mainly derived from secondary and primary sources. This involved the use of questionnaires, in-depth information gathering and document analysis. The findings of this study suggest that at the national level, these statements made by foreign diplomatic missions do influence to a great deal the agenda of campaigns by politicians. In the case of the 2013 General Elections, the ICC was the

platform that formed the agenda for the two largest political coalitions, CORD and Jubilee Alliance. This was as a result partly of public statements and media interviews that had earlier been made by western diplomats and senior officials from their headquarters, that bilateral relations would be affected by a Uhuru-Ruto presidency. Their argument based on the fact that the two, Uhuru Kenyatta and William Ruto at the time of the 2013 General Elections were facing trial at the ICC for crimes against humanity during the 2007- 2008 post election violence. However, the study also found that unlike at the national level, at the local/village level, these statements by foreign diplomats played little to influence who the electorate voted for. Indeed, at the local/village level, issues touching on the people's day to day lives were the major determinants, therefore statements made by politicians influenced them more than statements made by foreign diplomats. For instance, through this study, that focused on the Mathare informal settlement day to day issues touching on the residents such as extra-judicial killings, ethnicity, broken promises on development by politicians and land seemed to be the major factors to who they voted for. In addition, the study also found that nationalistic ideals tended to be favored in Kenya over foreign ideals, an indicator that the sovereignty and respect of Kenya in the international arena was of growing importance to Kenyans especially following the 2007 General elections and the post election violence that followed it. However, the study also found that justice for impunity was important for Kenyans and that there is a need for a legal mechanism to deal with past injustices as well as a mechanism for ethnic reconciliation.



### **5.3 Key Findings**

According to this study, findings indicate that there has been some form of influence by the international community in Kenya's domestic and democratic affairs. For instance when the US and EU warned Kenyans against voting for the ICC suspects in the 2013 General Elections and a senior US foreign affairs official warned before elections that choices have consequences. However the study found that these warnings did not deter Kenyans from exercising their democratic rights and may have even caused some to vote against the UK and US warnings. The study also shows that media campaigns and public messaging by the Jubilee coalition headed by Uhuru Kenyatta and William Ruto who have publicly denied charges by the ICC and accepted to cooperate with the court managed to successfully use well crafted public statements to convert a Kenyan public that initially largely supported the ICC's attempts to call them to account into one that viewed the ICC as a representative of Western interference in African affairs.

According to the study Kenya appears to be at a crossroad when it comes to the questions of politics and policy. It displays both modernity and backwardness in equal measure. For instance, mobilization for elections remains largely ethnic, and in the 2013 general elections resulted in what could be argued a victory of a coalition of two ethnic communities and smaller groups that possess a large voting population. According to the study this is despite attempts to ensure that the influence of ethnicity is reduced in the daily interactions of citizens through various government commissions and NGO and CSO peace building initiatives. The study also shows that the debate in Kenya's

parliament about the cabinet captured this clearly when parliamentarians questioned the diversity of the team nominated and eventually appointed as cabinet secretaries

According to the study, it is clear that the Kibaki government through 'soft diplomacy' used regional bodies including IGAD, the AU and the EAC to rally support against the west particularly when it came to the emotive issue of the ICC, of which the Jubilee government has successfully taken up. The study has found that the election of Uhuru Kenyatta and William Ruto, however, presented the Kenya with an opportunity to test the functionality of the new constitution and its resultant institutions. Also through the study it is shown that Public spirited groups such as civil society organizations have openly campaigned against the elections of the two have a chance to test the new institutions through provided judicial processes that the new constitution has established

On the foreign policy pillars, the study noted that the focus of foreign policy in any respect does not appear to be new. It is largely made of patches from past regimes that the Jubilee Coalition seems to ably represent. According to the study, regardless of the rhetoric against western states, the jubilee coalition has asserted that it will continue to be engaging the traditional economic partners, including the United States, the United Kingdom and other European countries, and emerging players such as China, Brazil, India and Russia. However, one interesting aspect of Kenya's emerging foreign policy post 2013 General Election and in view of the ICC cases, is Kenya's stand on international issues as opposed to its traditional non-alignment stance. It seems that with the victory that the government was able to make by rallying the AU to support it in the ICC cases and its support in the 2013 ASP in regards to changing the rules of the Rome Statute no longer making it necessary for a Head of State to attend hearings at the IC

has given Kenya leverage not only regionally but international. It may not be a surprise if Kenya begins to comment more and more on regional and even international issues in the future.

It has been argued that to keep African countries underdeveloped, secure and ripe for exploitation, the West supported political dynasties, one party rulers, and dictators and undermined those who did not accept or buy into their values and beliefs.<sup>137</sup> For the West, democratic elections are used to guarantee a perpetuation of their values and interests.<sup>138</sup> Yet, elections today in Africa are increasingly being used by super and medium power states- be it the west or the east- to leverage economic and political advantages for their countries.

Political parties that favored Western ideals and beliefs led a sustained campaign during the 2013 General Elections on the platform of no impunity as concerns the post election violence as well as corruption with the backing of statements from diplomats in Western foreign diplomatic missions pushing up the ICC as an election agenda.

Indeed, political parties such as CORD and a few civil society organizations did all they could to make the ICC and justice to victims of the 2007 post election violence the main election issue, hoping that Kenyans would vote against the Jubilee Alliance coalition which had its presidential and running mate facing trial at the ICC. However through political campaigning and public statements, the Jubilee Alliance were convincingly able to create a picture of neo-colonialism through the ICC as they distorted the truth on how the ICC got involved with Kenyan post –election violence of 2007. Increasingly, due to campaign statements by Jubilee Alliance to the run up of the 2013

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<sup>137</sup>Mod Agun, How the West helps its African allies to lose elections: Pambazuka News, 26 September

2013

<sup>138</sup>Ibid

General elections the CORD alliance, led by former Prime Minister, Raila Odinga, was seen as supporters of the West's neocolonialism agenda- which may not have been the case as research on this area is still lacking.

However through this study in Mathare, findings indicate that although statements by western diplomats may have influenced the platform through which politicians ran their campaign in the 2013 General Elections, at the village level, these statements did not largely affect who the electorate in these areas voted for. Through the study, issues touching on the residents of Mathare such as extra-judicial killings, ethnicity, broken promises on development by politicians and land seemed to be major factors to who they voted for. The intervention by diplomats from some of the diplomatic missions in Kenya may have influenced Uhuru Kenyatta to position himself as a nationalist, at the National level defending the Republic's interest but at the village level, this nationalist, approach of defending the country's resources and pride/sovereignty may have endeared him to Kenyans such as those in Mathare and rallied feelings among them of finally belonging to a country that cares for its people and their day to day issues. Indeed, in a nut shell, the Jubilee Alliance promised a sovereign nation, that allowed Kenyans to choose their own destiny, and reflected the aspirations of the youth who form the majority in Kenya. This vision resonated with many Kenyan youth especially those in the informal settlements such as Mathare.

#### **5.4 Recommendations**

States with diplomatic presence in Kenya should respect the sovereignty of the state and the democratic rights of the Kenyan people during elections without interfering in the decision making process of the citizens. However, as friends of Kenya, viola

to Human rights as spelt out in the UDHR as well as other international treaties such as the International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, the ICERD, the CEDAW, the CAT and the CRC among others may allow them to speak on international norms regarding the behavior of the Kenyan government in relation to its citizens. I would recommend for the Kenya Ministry of Foreign Affairs and International Trade to formulate a policy paper on communications and Kenya's relations with diplomatic missions in the country. The policy paper should be balanced, providing guidelines on how these statements can be made during the electoral period but most importantly allowing for the fundamental rights and freedoms enshrined within the Kenya constitution to be respected especially freedoms of speech and associations as well as respect of the Vienna Convention on diplomatic relations.

Kenya is a sovereign state and countries with diplomatic presence in Kenya need to respect both the President and the Deputy President's right to be presumed innocent until proven guilty in regards to the on-going cases at the ICC. However, States that are signatories to the Rome Statute should continue to hold the Government of Kenya to account in regards to its cooperation with the Court, this could be done through several forums including through the ASP, the AU, the UN or even bilaterally.

In addition, the ICC has to increase its public outreach to the Kenyan citizenry so that they may understand better the operations of the Court. The ICC's outreach office in Kenya, should come up with a more effective communication strategy that will allow it to engage with the Kenyan Population more successfully. This will help in dispelling rumors that the Court has an imperialistic agenda and that it will not be fair in its

decisions. The Court also needs to avoid being pulled in to political debate by releasing statements each time a politician speculates or speaks negatively about the Court.

The Kenyan Government should also ensure that witnesses and their families in the on-going Kenya cases at the ICC are protected. The Kenya Witness Protection Agency whose mandate includes assuring the security of potential witness against the masterminds of violence and other related cases, needs to be strengthened and made more independent of the state even though it receives funding from the state. The Media Council of Kenya, should also recommend guidelines for blogs and other social media in regards to naming of individuals under witness protection. The office of the Director of Public Prosecution as well as parliament should come up with legislation that allows for the prosecution of owners of blogs or other social media that makes public through news articles names of individuals under witness protection. On the other hand the ICC should have a more efficient mode of gathering evidence which is independent, well researched, fair and that protects the identity of witnesses and their families.

Current legislation that bars hate speech such as The National Cohesion and Integration Act, 2008 needs to be observed and applied. Although, the Kenyan constitution has an expanded bill of rights that includes freedom of expression and free speech, the right to life supersedes any other right. Individuals that propagate hate speech should be prosecuted under existing Kenyan laws including the supreme law, the constitution which apart from having an expanded bill of rights also limits freedom of expression by stating that it does not extend to: propaganda for war, incitement to

violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm.<sup>139</sup>

### **5.5 Areas for Further Research**

This study focused mainly on the implication of public statements by USA European Union and other western states on the outcome of Kenyans elections with a particular focus on the 2013 General Elections. More study should be done to establish the influence or interference of not only western states but also eastern states such as China and African states such as Uganda on the outcome of Kenyan elections. Lastly a study should be carried out to determine the influence of Kenyan elections to the operations and judicial proceedings of the ICC.

### **5.6 Conclusion**

In conclusion, through this study, findings indicated that statements by foreign governments and their diplomatic missions only influence the direction of political agendas at the national level but not at the local and grassroots level. However, ethnicity still has a major political influence in Kenya and does play a big role on who gets elected to political office. In addition, media is a powerful tool in influencing the electorate. Looking forward, the media and civil society whose voice has seemingly vanished since the 2013 general elections should ensure that they effectively, without fear or partisanship, keep up the watchdog role in holding the government to account for the extensive promises in its manifesto. On the other hand Western States should respect the Kenyan democratic right of electing its leaders and government and have a respect of the Kenyan constitution.

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<sup>139</sup>The Constitution of Kenya (2010), chapter Four article 33

However, as friends of Kenya and as members of a larger international community they should also ensure that Kenya respects its international obligations and that the Kenyan Government upholds universal values such as Human Rights, Respect for the rule of law and good governance. Also the Kenyan judiciary and the ICC should be given a conducive environment to exercise fair justice.<sup>140</sup>

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<sup>140</sup> Marc Stears, "Review Article: Liberalism and the Politics of Compulsion," *British Journal of Political Science* 37 (2007): 543.



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**APPENDICES**

**Appendix I: Interview Guide**

1. Gender: Male  Female
2. Age: Below 20years  21-25 years  26- 30yrs   
30-35 yrs  36- 40 years  40- 50 years   
Above 50 years

3. Level of education

- Degree  Masters   
PhD  Other  specify .....

4. Profession .....
5. Do you agree with the statement that Kenyans feel that their position is a special one and the West can only ignore the country at its own risk?

Yes  No

6. Briefly support your answer

.....

7. Does the rise to power of Uhuru Kenyatta and William Ruto been touted as putting western powers in a difficult situation?

Yes  No

Briefly state why .....

8. Do you agree that contradictions in the anti-Western posturing of the Jubilee campaign before the 2013 General elections, particularly on foreign policy, revolve around key spinner?

Yes  No

Briefly state why .....

9. Are you in agreement that the statements by the west (European states and North American States) pre 2013 General Election aimed at installing leaders of their choice in Kenya and eliminating the ones they did not like?

Yes  No

Briefly state why .....

10. Do you think the ICC cases have influenced the direction of foreign policy before and after the Kenya 2013 elections?

Yes  No

If yes in which ways .....

11. Uhuru Kenyatta was the first person to be elected president while facing trials at ICC on serious crimes against humanity, will this unique position likely impact decisions on relations with Western states?

Yes  No

If yes in which ways .....

12. According to the 2013 general elections does Kenya appear to be at a crossroad when it comes to the questions of politics and policy?

Yes  No

Why? .....

13. Kibaki regime used regional bodies including the Intergovernmental Authority on Development (IGAD), the African Union (AU) and the East African Community (EAC) to rally support against the west (Europe and the United States) particularly when it came to the sensitive question of the ICC, do you think that the new regime is expected to do the same?



Yes  No

14. The US Assistant Secretary of State, Johnnie Carson, warned Kenyan voters that, "choices have consequences." Do you agree with this statement?

Yes  No

Why? .....

15. The British position and the European Union before the 2013 General election was that it would have limited contact with a president indicted by the ICC, is this the current state?

Yes  No

Why? .....

16. The European Union congratulated Kenyans for conducting a peaceful process and noted that the rule of law should be maintained at all times. The Canadian ambassador chimed in with similar sentiments. What was this statements intention?

.....  
.....

17. From recent statements, the new government has said that it plans to unveil a policy focused on East African integration, pan-African cooperation and trade. Will this approach lead to tensions with the west?

Yes  No

Briefly state why? .....

18. Do you think statements by western states are likely to continue shifting following the election of Uhuru Kenyatta and William Ruto as President and deputy respectively?

Yes  No

State why? .....

19. Do you agree with the statement that Kenya can't afford sanctions or diplomatic pressure that could prejudice its economic development?

Yes  No

State why? .....

20. Is it still difficult to tell with certainty the direction Kenyan foreign policy will go?

Yes  No

State why? .....

21. Are you tempted to agree with James Verrini in his conclusion that President Kenyatta's foreign critics, failed to concede that countries will confront their pasts, or not, only on their own terms?

Yes  No

State why? .....

**THANK YOU FOR YOUR TIME AND PARTICIPATION**

**Appendix II: Questionnaire**

**SECTION A: GENERAL BACKGROUND**

22. Gender

Male  Female

23. Age

Below 20years  21-25 years  26- 30yrs

30-35 yrs  36- 40 years  40- 50 years

Above 50 years

24. Level of education

Primary  Secondary

College  University

Other.....

25. Marital status

Married  Single

Divorced  Widowed

26. Which area of Mathare do you live .....

27. No of years resided in this area

Below One Yr  1- 2 Yrs  2-4 Yrs

4-6 Yrs  6- 10 Yrs  10 -15 Yrs  Above 15 Yrs

28. What is your Occupation : Please tick one

Employed  Self employed  Jobless

## **SECTION B: HISTORICAL EVENTS**

29. Do you believe that the historical events of Kenya affected the outcomes of 2013 Kenya general elections?

Yes  No

30. Do you believe that the history of candidates contesting for presidency impacted on the outcomes of 2013 Kenya general elections?

Yes  No

a) In which way

Positive  Negative

b) To what extent

Very great extent

Great extent

Moderate extent

Little extent

No extent

31. What is your level of agreement with the following injustices highlighted and their impact on the outcomes of 2013 Kenya general elections? Use a scale of 1-5 where; 5 Very great extent, 4 Great extent, 3 Moderate extent, 2 Little extent, 1 No extent

Statement	1	2	3	4	5
Land grabbing					
negative ethnicity					
Scandals					
Political shifts					
Extra judicial killings					

Other kindly indicate .....

### SECTION C: INTERNATIONAL LEGAL PROCEDURES

32. Do you agree that the current cases at the ICC impacted the outcomes of 2013

Kenya general elections?

Yes  No

a) If so to what extent

Very great extent

Great extent

Moderate extent

Little extent

No extent

33. To what extent do you agree with the following statement that relates to

International Legal Procedures on the outcomes of 2013 Kenya general elections?

Use a scale of 1-3 where; 5 Very great extent, 4 Great extent, 3 Moderate extent,

2 Little extent, 1 No extent

Statement	1	2	3	4	5
The ICC suspects were accused unjustly					
The cases were politically framed to affect some candidates					
The ICC cases boosted some of the suspects political stand and favored them					
Kenyans were against the ICC cases from the start					
Witnesses were coached to sympathize with the West					

Any comment.....

**SECTION D: FUNDING OF POLITICAL CAMPAIGNS**

34. Do you support the funding of political campaigns?

Yes  No

35. What is your reaction on the funding of political campaigns witnessed during the

2013 Kenya general elections? .....

.....  
 .....

To what extent do you agree with the following statement that relate to political campaigns? Use a scale of 1-3 where; 5 Very great extent, 4 Great extent, 3 Moderate extent, 2 Little extent, 1 No extent

Statement	1	2	3	4	5
The funds were siphoned from the Kenyan citizens through taxes					
Western states were funding some candidates with strings attached					
So much was spent during the campaigns I feel it was a total waste and could have been used in economic favor of our Nation					
Campaign funds are source of inhuman acts					
Campaign funding should be regulated and the candidates should use their own funds					
Politicians should be cautious with what they say as it contributes to violence and other vices					

### SECTION E: INTERNATIONAL MEDIA REPORTS

36. Do you think the international media reports had an impact on the 2013 Kenya general elections?

a) In which way

Positive  Negative

b) To what extent

Very great extent

Great extent

Moderate extent

Little extent

No extent

37. What is your level of agreement with the following statements that relate to international media reports on the 2013 Kenya general elections? Use a scale of 1-5 where; 5 Very great extent, 4 Great extent, 3 Moderate extent, 2 Little extent, 1 No extent

Statement	1	2	3	4	5
The information was malicious and of no importance					
They favored one candidate					
They aimed at triggering election violence					
The reports were fair and vital					
The international reports focused on the ICC and other vices than the good will of Kenyans					

38. What is your general feeling on the implication of public statements by USA and European Union on the outcome of Kenyans Elections?

- i.
- ii.
- iii.
- iv.

**THANK YOU FOR YOUR TIME AND PARTICIPATION**



## Appendix III: Public Statements

## OFFICE OF THE PRIME MINISTER

### PRIME MINISTER ODINGA'S INTERVIEW WITH FINANCIAL TIMES

Prime Minister Raila Odinga is deeply intrigued and feels absolutely slandered by the story appearing in the Financial Times that implies he will not accept defeat in the Monday elections. However free and fair.

Prime Minister Odinga conducted two interviews at short intervals on Friday, March 1, 2013 with the Financial Times and the British Broadcasting Corporation Radio and TV at his home in Bondo.

In none of these interviews did Mr Odinga speak of violence should he lose elections as reported by the Financial Times today.

In both interviews, PM referred to his sporting career as an athlete and footballer and repeated that as a sports person, he understands losing and winning as part of the game.

Asked what it would be the end of his political career if he loses the elections, the PM's answer was,

"I strongly believe I am going to win this election, and in round one. However, in the likely event that I lose, I believe there will be a role for me in Kenya. I can write my memoirs, I have a family to take care of, and, most importantly, I have a party that I will continue to guide so we can deepen democracy in Kenya. I believe the democratization of Kenya has been my biggest contribution to the country and I want to push it to the end whether I am in or out of elective politics."

Asked what should he win, the PM said:

"I will want to form an inclusive government, in which all, including my opponents, will have a role, so we can take this country forward."

Asked what he claims that his supporters are being targeted with propaganda leaflets, the PM said:

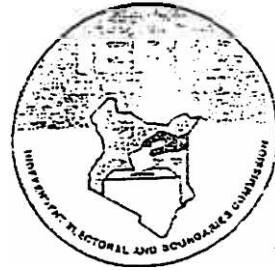
"I am aware that my opponents are scaring my supporters so that they can migrate from where they are registered in order to cut the spread of my vote. It is a form of rigging and Kenyans will not accept it. However, the people they are pushing out constitute a drop in the ocean of my support. I will still win this election despite this dirty campaign."

PM Odinga is shocked by the Financial Times story and considers it the work of a writer and a person with a preconception with fixed idea of Kenya as the country goes to elections.

DENNIS ONYANGO;

Communication Secretary, Office of the Prime Minister;

March 2, 2013.



AIRMAN'S PRESS BRIEFING ON THE ELECTION DATE 4<sup>th</sup> MARCH.

13.

AT 10:00AM

low Kenyans: the election process kicked off in most of the stations at 6am the morning as planned. We note that there are some polling stations that opened late. The Commission would wish to assure the public that such time that will surely be compensated.

We are aware that some poll books have malfunctioned, due to a variety of factors, including power problems. However in all such cases, the commission has authorized the use of manual register. This device truly enhances the integrity of the electoral process and is not in any case an inferior alternative to a poll book. To fully ensure that the entire process is foolproof we encourage political party and candidate agents to be vigilant and observant at the polling and vote counting stages.

**Requirement for voting**

We wish to repeat that voters should present valid documents they used during registration. Only original ID and valid passport will be allowed.

Initial Audit of the ballot papers has revealed a very tiny number, no more than half dozen of positions with missing political party symbols, mix-up of candidate pictures and one or two candidate's names entirely missing from the register. All such cases concern only the County Assembly Wards. In the interest of fairness and observant of its constitution mandate the Commission has rescheduled elections in such county assembly wards to 11<sup>th</sup> March 2013.

TV/RADIO ADDRESS BY HIS EXCELLENCY HON. MWAI KIBAKI, C.G.H.,  
M.P., PRESIDENT AND COMMANDER-IN-CHIEF OF THE DEFENCE  
FORCES OF THE REPUBLIC OF KENYA, TO THE NATION AHEAD OF THE  
MARCH 4<sup>TH</sup> GENERAL ELECTIONS, AT STATE HOUSE, NAIROBI, 1<sup>ST</sup>  
MARCH, 2013

Fellow Kenyans:

In two days time you will be casting your votes for your preferred candidates. MONDAY 4<sup>th</sup> MARCH, TWENTY THIRTEEN is a historic day in our nation's calendar.

On that day we cast our votes for the first time since the birth of the second republic, following promulgation of our constitution on 27<sup>th</sup> AUGUST TWENTY TEN...

This Monday, you, as a voter, has a date with destiny...

In casting your vote, you will be exercising your democratic right and taking your place in history.

By voting, you will shape the destiny of our nation. By voting, you decide the leadership that will manage your hopes and aspirations.

I therefore, encourage you to get out and vote and help determine the future, of our nation. I also make a passionate plea for all of us to vote peacefully. Indeed, peace is the cornerstone of our development.

As a nation, we must consolidate the development strides we have made by ensuring a free, fair, just and peaceful election.

Let us send a clear message to the world, that our democracy has come of age. A peaceful vote is a vote for a secure, prosperous and stable Kenya.

Let us also appreciate that every election will produce winners and losers. To the men and women who shall be declared winners, I appeal to them to embrace victory with humility and to begin the journey of serving the people in earnest. To those who will not win, your country still needs you. There are many other roles you can play in our development endeavours.

I also assure Kenyans that the Government has mobilized all its security personnel to ensure that we have a peaceful election.

Let us also play our individual roles through tolerance and by embracing peace. We must guard our national unity and protect our homeland of Kenya.

Finally, I wish you all, best of success.

Remember Monday 4<sup>th</sup> March is your date with destiny. Cast your vote and keep the peace.

Thank you and God bless Kenya.



Sun 03/03/2013

Fellow Kenyans

The Independent Electoral and Boundaries Commission would like to inform you that is ready for the General Elections tomorrow.

The Commission has put in place all the necessary measures to ensure a free, fair and credible elections.

**Logistics**

The Commission has distributed strategic and non-strategic materials countrywide. The Strategic material are ballot papers and ballot boxes as well as statutory forms 34 and 35 and poll books.

The non-strategic material includes stationary, laptops, seals, indeleible ink and demarcation banners.

**Human Resource**

The Commission has recruited, trained and deployed polling officials to the various stations. The polls officials have taken an oath of secrecy to ensure that they adhere to the electoral code of conduct.

We also wish to notify the public that we have reduced the number of polling clerks across the country and increased polling booths countrywide. This is rationalize the numbers across the country.

**Security**

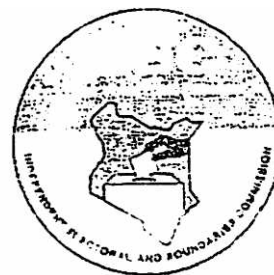
Through the assistance of Inspector General, the Commission has deployed over 99,000 security personnel to the over 33,400 polling stations and the National Elections Centre.

The Security personnel were trained by the Commission on the electoral process and operations.

The office of the Inspector General of Police will give further information on this.

**Election offences**

The Commission has established a tripartite committee comprising of the Director of Public Prosecution, National Police Service and The Commission and developed guidelines for investigation and prosecution of election offences.



This appeal is important and we urge you to take it seriously.

### Logistics

The commission is happy to report that it surmounted all the logistical challenges necessary to mount a successful election.

### Conclusion

As of now the challenges posed by the poll book although predictable and largely addressed remain a matter of concern to the commission and the necessary remedial measures have been taken and the results so far indicate marked improvement in the performance of the devices.

Unlike elections elsewhere in Africa in recent memory failure of technology will not hinder or inhibit the conduct of this election. We urge voters to maintain calm at the polling stations as this matter is addressed.

We also thank Kenyans for so far turning out in large numbers.



## IEBC Chairman's Update: 9.00 pm March 4, 2013

Welcome to our third media briefing today— but the first since polls officially closed at 5.00 pm.

We are happy to state once again that despite the hiccups reported earlier in the day, the voter turn-out has been very encouraging and by 5.00 pm this evening, our statistics show that 60 percent of the 14.3 Million registered voters had cast their votes. Voters still queuing should not be turned away and should ensure that they vote.

But we expect this percentage to increase significantly because polling was still going in arrears where we compensated for the time lost because of late opening polling stations. Besides, voting was also going in other areas where polling stations opened within the stipulated time but we had to extend the time to allow the huge number of voters who were already at the polling stations to cast their votes.

As you can see from our screens, results for the presidential election are already trickling in and are being relayed live electronically as and when they reach the National Tallying Centre. But we wish to inform Kenyans that these are provisional figures and they should wait for the Commission to announce the final and official results.

**EVID update:** In situations where the EVID failed, and we resorted to the poll book register, we are happy to report that it didn't in any way undermine the integrity of the elections. We wish to thank Kenyans for the patience and partnership in this process.

**Update on security:** No further incidents of insecurity have been reported and we want to commend Kenyans for keeping the peace. We are encouraged by the fact that despite the unfortunate incident in Mombasa and Kilifi where police officers were killed, voters defied the security threat and still turned out in large numbers to vote.

U.S. DEPARTMENT OF STATE  
Office of the Spokesperson

For Immediate  
Release

March 5, 2013

2013 0248

STATEMENT BY PATRICK VENTRELL, ACTING DEPUTY SPOKESPERSON

Elections in Kenya

The United States applauds the Kenyan people for participating peacefully in the March 4 national elections.

Although there were scattered acts of violence in two areas of the country, the vast majority of Kenyans voted in a calm, patient, and orderly manner. The final results are not in. Kenya's Independent Elections and Boundaries Commission is in the process of tallying the ballots and we expect final results soon. We encourage the electoral commission to continue its work in a thorough, transparent, and professional manner.

We encourage all Kenyans to come together and move forward peacefully to realize the full promise and benefits of the new constitution. We urge that any election disputes be resolved peacefully through the Kenyan legal system. It is critical that Kenya avoid the post-election violence that marred the December 2007 presidential contest.

###





## STATEMENT BY

PRESIDENT JOAQUIM CHISSANO

HEAD OF THE AFRICAN UNION ELECTION OBSERVATION MISSION TO THE  
GENERAL ELECTIONS IN KENYA

The African Union Election Observation Mission arrived in Kenya on 24 February 2013 and deployed twenty-nine (29) teams composed of 60 observers. The teams visited twenty-eight (28) Counties, namely: Bungoma, Embu, Homa Bay, Kaijado, Kakamega, Kericho, Kiambu, Kilifi, Kisii, Kisumu, Kitui, Kwale, Machakos, Makueni, Meru, Mombasa, Murang'a, Nairobi, Nakuru, Narok, Nandi, Nyeri, Siaya, Trans Nzoia, Uasin Gishu and Tharaka Nithi.

On Election Day the teams visited a total of 482 polling stations covering 130 constituencies in their respective areas of deployment.

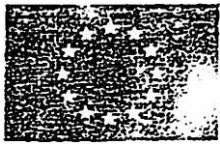
It is my pleasure to share with you the preliminary findings of the Mission.

First, the African Union Election Observation Mission wishes to congratulate the people of Kenya for the peaceful conduct of the 4 March 2013 General Elections. This attests to the faith that Kenyans have in the electoral process as the basis of selecting their leaders.

Particularly, the African Union Elections Observation Mission commends Kenyans for the enthusiasm displayed on Election Day by turning out in their numbers even in the early hours of the morning before the polling stations opened.

The Mission notes that with few exceptions, generally, polling centres opened on time and officials of the Independent Electoral and Boundaries Commission (IEBC) competently assisted voters as expected, despite challenges with the biometric verification of voter identity. In this regard, the African Union Election Observation Mission noted with satisfaction the extra efforts by the polling officials to complete the process in one day despite the long queues in most polling stations toward closing time.

Furthermore, the presence of security officials was noted in all the stations visited by the African Union Teams. The African Union Election Observation Mission notes with commendation the manner in which security officials secured the process, in some instances, at the expense of their lives. It is noteworthy that some officers lost their lives in line of duty all in a bid to protect the electoral process.



European Union Election Observation Mission  
Republic of Kenya – General Elections 2013  
Press release: EU EOM/001/13  
Date: 06/03/2013

## PRESS RELEASE

### Kenyans demonstrate strong commitment to democratic elections

NAIROBI, 06 March 2013 – The 4 March General Elections were the first real test of Kenya's new Constitution, new electoral framework and reformed judiciary, and although the process is not yet over, Kenya can be credited with demonstrating a strong commitment to democratic elections. The election process has called for huge efforts on the part of the Independent Electoral and Boundaries Commission (IEBC), as well as dedication on the part of Kenya's electorate. While several serious violent incidents occurred in some parts of the country, EU election observers have found that the overall atmosphere during the elections was calm, and the democratic spirit of Kenyans prevailed.

The elections were characterised by a huge society-wide push for peace, transparency and credibility. *"I was pleased to see that Kenyan voters' determination to exercise their democratic rights was strong enough to defeat even the longest queues."* Chief Observer Alojz Peterle said while presenting the EU EOM's preliminary findings in Nairobi. *"Kenyans stood up for peace and for their rights on Monday. Their commitment to exercising their rights sets a positive example not only to the region, but to the world."*

It was an ambitious undertaking to elect the president, the national assembly, the senate, governors and county assemblies in one day. The IEBC retained the electorate's trust, however inconsistent decision-making mechanisms drew it into a series of delays. Despite this, the IEBC succeeded in overcoming the technical and operational difficulties on Election Day to ensure that the integrity of the vote was protected.

There were some elements of the electoral process which will require more attention from Kenya in the future. Despite an existing quota system, women's participation as candidates was disappointingly low, while some Kenyan communities and marginalised groups remain disenfranchised as a result of not having national ID cards. More than 3 million eligible voters were not registered during the biometric voter registration process and were therefore unable to vote in these elections, and some candidates who won their High Court bid to be on the ballot were still excluded.

With the voting process over and the counting and tallying continuing, the EU EOM will observe the rest of the election process closely. *"The phases ahead of the IEBC and Kenya are as much defining parts of the process as Election Day."* Mr Peterle said. *"The overall credibility and transparency of the General Elections can be assessed after the tallying, the announcement of the results and any possible petitions are also dealt with."* To observe these phases, the EU EOM will remain in Kenya until the end of the process, and present its final findings approximately two months later in a comprehensive Final Report.

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## PRELIMINARY STATEMENT

### Kenyan demonstrate strong commitment to democratic elections

Nairobi, 6 March 2013

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#### Summary

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- Kenya's General Elections were characterised by a huge society-wide push for peaceful, transparent and credible elections. Kenyans should be congratulated for their civic pride and responsibility, queuing patiently for long hours to cast their vote. While several serious violent incidents occurred in some parts of the country, overall the atmosphere was calm and the democratic spirit of Kenyans prevailed.
- These elections were the first real test of Kenya's new Constitution, new electoral framework and reformed judiciary. It was an ambitious undertaking to elect the president, the national assembly, the senate, governors and county assemblies in one day. This called for huge efforts on the part of the Independent Electoral and Boundaries Commission (IEBC), as well as dedication on the part of Kenya's electorate.
- Throughout the electoral preparations, the IEBC retained the electorate's trust. Nonetheless, the IEBC's inconsistent decision making mechanisms drew it into a series of delays. The IEBC and its staff succeeded in overcoming the technical and operational difficulties which arose on Election Day to ensure that the integrity of the vote was protected. The counting and tabulation are still ongoing and represent a crucial part of the process, which EU election observers are following closely around the country.
- Civil society played an active and positive role in supporting the electoral process, with young people playing an important part. Kenya's state commissions, constitutionally responsible for monitoring and protecting equality and human rights, remained independent and constructive throughout the election.
- Freedom of speech in the media was respected. The media were active in advocating for a peaceful process. They offered extensive coverage of elections and voters were able to access information about contestants and compare candidates in the broadcast debates.
- Despite the quota system and constitutional principles for affirmative action, women's participation as candidates was disappointingly low. Even so, women were well represented in the electoral administration and committed as voters.
- Some Kenyan communities and marginalised groups remain disenfranchised as a result of not having national ID cards. In addition more than 3m eligible voters were not registered during the biometric voter registration process and were therefore unable to vote in these elections.
- A negative consequence of the amended timelines in the Elections Act was that some candidates who won their High Court bid to be on the ballot were still excluded.

## Election Administration

The IEBC was charged with simultaneously administering six nationwide elections: the volume and complexity of its tasks have been extraordinary. The Commission's competent handling of the 2010 Referendum and 11 by-elections prior to its official establishment helped establish its credentials, and it was able to retain stakeholders' trust, most importantly with respect to its impartiality.

However, the IEBC's efficiency was sometimes hindered by the lack of a consistent decision-making process, resulting in a series of delays. Beginning with a three-month delay of voter registration as a result of procurement difficulties, key elements of the electoral framework were carried out in evermore compressed timeframes and too close to polling to ensure steady implementation. In the last few weeks of preparations, endeavours such as recruitment of polling staff and the distribution of materials were made more difficult in the absence of finalised decisions about polling stations.

The IEBC's investment in technology to ensure transparency and efficiency inspired crucial public trust, specifically in relation to voter registration and identification, and the processing of results. However, some of the confidence-building advantages of technology could equally have been achieved by more frequent and detailed communications to the electorate, alongside more precise, comprehensive and widely-disseminated published procedures covering all stages of the electoral process.

Voter Education was started late for such a complex election process. The IEBC carried out its own programmes as well as accrediting other organisations to do so. However there was little evidence of effective voter education until the IEBC launched its ward-based programme one month before polling. While the visible voter information in the media came only about two weeks before the elections, it was not limited to spots and also involved good quality programmes addressing voters' understanding of voting procedures.

## Voter Registration

The Constitution establishes extremely inclusive criteria for the right to vote. In practice however, the Elections Act stipulates that qualifying age and citizenship must be proven by possession of a National Identity Card and not all citizens have one. It is estimated that some 3m Kenyan citizens do not have ID cards and were thus unable to register.

Biometric Voter Registration (BVR) was carried out in order to prioritise accuracy and reliability of the register for the 2013 General Elections, and this approach significantly contributed to the credibility of the Voter Register. The final National Voter Register lists over 14m people, which constitutes an improvement over registration for the 2010 Referendum. However delays in the process led to curtailed registration and verification periods. Since the Voter Register is a cornerstone of any election process and requires significant mobilisation, it is regrettable that the time available was shortened. Several amendments were made to the Elections Act to reflect the shortened timeframe, including setting a deadline for publication just 14 days before polling.

## Media

Freedom of speech in the media was respected. Overall, the media gave extensive coverage of the elections. Voters were able to access information about key contestants and they could also compare presidential and gubernatorial candidates in the televised debates. Broadcast media were very active in promoting voter education in the last two weeks of the campaign. However, there were also a few cases of journalists who were intimidated or prevented from conducting their work.

The national media focused predominantly on the two leading coalitions. Most vernacular radio stations monitored by the EU EOM showed a preference in terms of time offered to one or the other of the two front running coalitions. Negative media coverage was usually the result of critical remarks by political opponents, rather than bias from the media. The access of less prominent parties and contestants to the media was limited, with a lack of financial means being the main discriminatory factor.

The state-owned Kenya Broadcasting Corporation (KBC) gave more coverage to the two major alliances, but it also offered free significant segments of time to other contesting parties and maintained generally equitable coverage of the presidential candidates. KBC provided free airtime to key contestants and parties, but it was not organised in such a way that all parties could benefit.

The broadcast media played an active and important role in advocating for peaceful elections, and tended to filter inflammatory messages reportedly articulated by politicians in their campaign rallies. In seeking to comply with the restrictive legal framework on dissemination of hate speech, they may at times have limited public awareness of the negative tone of some of the campaigning. Some media did not respect either the ban on publication of opinion polls within five days of Election Day or the campaign silence period.

## Participation of marginalised groups

An overly bureaucratic and lengthy procedure for obtaining ID cards caused minority groups and indigenous communities to face difficulties in registering as voters. This was borne out by significant discrepancies in the number of voters registered in border counties in comparison to urban areas. For example, while in Turkana on average just 30% of the population registered to vote, in central areas the number was close to 100%.

The constitutional principle of providing representation for minority and marginalised communities through the system of special seats has not been fully implemented. The lists of nominated special seats were published late due to the fact that some political parties failed to comply with the legal requirements relating to the gender, age and special interest groups quota. The High Court decided that it was constitutional for the Elections Act to provide that candidates for president or deputy president can also be on the list for special seats.

the paper Voter List. In part thanks to the IEBC's swift public statement, citizens accepted this solution with equanimity.

Polling stations were adequately staffed, opening and polling procedures were generally followed, and EU EOM observers considered that in most of the stations visited, the overall conduct of operations was good. Nonetheless, in a third of cases EU EOM observers found that secrecy of vote was not sufficiently protected, mainly because of the way polling booths were arranged.

The speed with which large numbers of voters could proceed to vote and leave depended in part on the number of polling booths in each station, which varied significantly. Most polling stations attended by EU EOM observers closed within an hour of the official closing time and in all cases counting took place in a peaceful atmosphere. Closing and counting procedures were respected, including correct allocation of votes to candidates, determining valid and invalid ballots and the procedures for disputed ballots.

EU EOM observers considered that in all the polling stations attended, the overall conduct of operations was good and that the recorded results reflected the will of voters. Party agents were able to attend counting and observe procedures unhindered but in nearly half of polling stations observed, not all party agents received a copy of the results forms. Electronic transmission of provisional results was only successfully carried out in a small number of the polling stations attended by EU EOM observers, with failures occurring most often because the network was congested. The EU EOM is observing tallying of official results at constituency, county and national tally centres.

The European Union Election Observation Mission (EU EOM) has been present in Kenya since 19 January 2013 following an invitation from the Independent Electoral and Boundaries Commission. The Mission is led by Chief Observer Alojz Peterka, Member of the European Parliament (Slovenia). In total, the EU EOM deployed 65 observers from 26 EU Member States, Norway and Switzerland across the country to assess the whole electoral process in accordance with international and regional commitments for elections as well as the laws of Kenya. A delegation of members of the European Parliament, headed by Krzysztof Lisek MEP, also joined the mission and fully endorses this Statement. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005. The EU EOM will remain in country to observe post-election developments and the tabulation of results and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM wishes to express its appreciation to the Independent Electoral and Boundaries Commission and other authorities, political parties and civil society as well as the people of Kenya for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Union to Kenya and the European Union member states' diplomatic missions for their support throughout.

An electronic version of this Preliminary Statement is available on the Mission website [www.eucom.eu/kenya2013](http://www.eucom.eu/kenya2013). For results of the EU EOM media monitoring analysis, please visit the mission website link <http://www.eucom.eu/en-eom-kenya-2013/media>. For further information and interview requests please contact: Peter Visnovitz, EU EOM Press Officer, Mobile: +254 (0) 7249 64788. Email: [peter.visnovitz@eucomkenya.eu](mailto:peter.visnovitz@eucomkenya.eu)

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# Commonwealth Observer Group

## Kenya General Elections 2013

### INTERIM STATEMENT

#### Dr. Festus Mogae, Chairperson of the Commonwealth Observer Group

The Commonwealth Observer Group has been present in Kenya since 25 February 2013. During this period we have met with the Independent Electoral and Boundaries Commission (IEBC), representatives of political parties, civil society, media, Commonwealth High Commissions as well as other international and local observers. Commonwealth teams were based in seven of the Provinces. Our teams observed the voter registration, the counting and results aggregation and also met with electoral officials, observers and other stakeholders at the County level to build up a larger picture on the conduct of the process.

This is the interim statement of the Commonwealth Observer Group, and it is issued with the process yet to be completed as the critical tabulation and results processes are on-going. We will issue a Final Report in due course, containing our conclusions on the entire process.

#### Findings

The 4 March 2013 elections were Kenya's first General Elections under the new Constitution and a series of new laws governing the elections, and represent an integral step in the reform and evolution process. Citizens have voted for the President, National Assembly, Women Members of the Assembly, Senate, County Governors and County Assemblies; three of which are brand new institutions. The 2013 General Elections since the

candidate had to have been a member of a party in order to qualify for nomination was reduced from six months until the day of nomination, thereby facilitating party campaigning up to the last moment.

The IEBC set a figure of 20 million as the potential eligible electorate. During the 30 day registration period that was eventually provided for, the IEBC registered some 14.3 million persons. While the registering of 14.3 million persons in just 30 days is an impressive figure, such a truncated period of registration for such large scale elections is unfortunate. The start of registration had been delayed following delays in the decision regarding the system of registration to be used and problems with the procurement process. There were also some delays in the finalisation and certification of the lists due to the time required for the cleaning up and correcting of data. Final figures indicate that some 13,000 people were double registered and therefore excluded from voting.

There is a higher level of confidence and trust in the independence of the judiciary following reforms and new appointments among judges at various levels. This is very positive in the context of the elections and more broadly. It was also positive that Courts sought to fast track electoral matters and that informal mechanisms existed, such as the Political Party Liaison Committees, to resolve conflicts between parties.

### **The Election Campaign and Political Participation**

The election campaign was reportedly generally peaceful. There were some local incidents and also tensions in some areas where there had been pre-existing problems, such as in the Tana River. But overall candidates and parties held numerous rallies and meetings throughout the country and were able to freely assemble and express their views. The numerous calls for peace by leading figures helped foster the conducive climate, as did the high profile peace rallies, such as the large one in Nairobi the week before the election. The presidential debates also helped focus attention on the issues and candidates engaged in them in a constructive manner. Further, the absence of hate speech in media and a more balanced coverage by media generally also contributed to the positive assessment of the election campaign.

The level of women's representation in elective institutions under the current dispensation is improved compared to previously when just 10% of the members of parliament were female. Now there are special seats for women in the National Assembly, 15 seats allocated in the Senate from party lists and 10 women members for County Assemblies. However, Article 27(3) of the Constitution states that the "State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender". But following a decision of the Supreme Court, the implementation of this provision was postponed. It is hoped that for future elections the positive provision in the Constitution for more balanced gender representation is implemented.

### **Voting and Counting Procedures**

The turnout of voters was high, with long queues at many polling places prior to the opening of polls at 6.00. In some voting centres there were thousands of registered voters which meant that there was a wait of several hours. Security was present and was on the whole effective in helping IEBC officers manage crowds. Polling staff worked hard and diligently and while some places experienced problems with the biometric voter identification devices the provision of printed registers as a back-up meant that people were not disenfranchised. The holding of six elections at the same time meant that voting was somewhat slow. Further, the different colours used for the ballots were not sufficiently distinctive and many voters had a problem identifying the correct ballot box for the respective ballots.

The vote count in polling stations was transparent, with officials conducting the process in a deliberate and careful manner and party agents were present and able to scrutinize the process, ensuring transparency and accountability at that level. It is noted that the number of invalid votes is quite high. This is unfortunate but not unforeseeable given the complexity of the voting process and the relatively late start of the IEBC's voter education campaign. The tabulation process is on-going and the IEBC must retain transparency in completing this and that any complaints are dealt with effectively to ensure accountability.

Nairobi, 6 March 2013

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March 6, 2013

FOR IMMEDIATE RELEASE

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### 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 that happened on the eve of the election day that led to the unfortunate loss of lives and the death of an IEBC 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 appeal to the IEBC and other stakeholders to make 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 IEBC and appeal to their supporters to remain calm, refraining from any action that may lead to compromising security 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

## 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 Siremlau. 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.<sup>1</sup> 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 on 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 on the 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.

<sup>1</sup> 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."

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.<sup>5</sup> 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.<sup>6</sup> 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 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.

<sup>5</sup> ICCPR, Art. 25(a); ICERD, Art. 5(c); CEDAW, Art. 7(b); UNHRC, General Comments 25, para. 2  
<sup>6</sup> AU-ACHPR, art.10(1); IPU, Declaration on Criteria for Free and Fair Elections art.3(3);

tion. It 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.<sup>9</sup>

## 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.<sup>10</sup> 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.<sup>11</sup> 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.

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.

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

<sup>10</sup> LN, 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

<sup>11</sup> LN, ICCPR, art. 25; ACHR, art. 23; UN UDHR, art. 21

spaces, 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.<sup>12</sup> 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.<sup>13</sup>

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 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

<sup>12</sup> UN. ICCPR, art. 25; AU. AfCHPR, art. 13

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

judicial system. The reformed 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.<sup>14</sup> 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 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

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

# JUBILEE COALITION MEDIA CENTRE

## *Press Statement*

Date: Wednesday 06/March/2013

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The Jubilee Coalition congratulates Kenyans for turning out in large numbers braving the long queues and scorching sun to carry out their democratic right to cast their votes. We commend them for their resolve to make Kenya's 2013 General Election a resounding success.

The Jubilee Coalition is however, deeply concerned about the shadowy, suspicious and rather animated involvement of the British High Commissioner to Kenya Dr Christian Turner in Kenya's 2013 General Election. The British High Commissioner, in cahoots with one Maina Kiai have been canvassing to have rejected votes tallied in an attempt to deny the Jubilee Coalition outright victory as indeed all indicators are showing at the moment.

The British High Commissioner should accept that Kenyans have spoken and their sovereign will should be respected and his role should be strictly limited to that of observer.

Further, we at Jubilee Coalition are alarmed by the abnormally high influx of British Military personnel in the country which began around the voting day, under the pretext of training. Kenya and Britain are traditional friends, but can the British High Commissioner explain to Kenyans the sudden upsurge of British military presence in the country.

As we await satisfactory answers to these disturbing questions, the Jubilee Coalition calls on our supporters and the nation at large to remain calm and peaceful.

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Signed

Hon. Charity Ngilu, EGH  
For The Jubilee Coalition



As we await satisfactory answers to these disturbing questions, the Jubilee Coalition calls on our supporters and the nation at large to remain calm and peaceful.

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Signed

Hon. Charity Ngilu, EGH  
For The Jubilee Coalition

## FCC Press Release: Foreign Office spokesperson statement on Kenyan elections

Comment. Following Monday's elections in Kenya, a Foreign Office spokesperson said:

*"The UK Government shares calls from the IEBC, political parties and the Kenyan people for patience and calm as the election results come in. We congratulate the Kenyan people on the spirit of peace in which the elections were conducted.*

*"We have always said that this election is a choice for Kenyans alone to decide. We respect their sovereign will, and the authority of the IEBC and Kenyan institutions to deliver it. We do not endorse any one candidate over another.*

*"Claims of British interference, including by the High Commissioner, in the electoral process are entirely false and misleading. In particular:*

- *Alongside six Independent observer missions and representatives from the rest of the diplomatic community, the UK has had 40 electoral observers accredited by the IEBC observing the elections across the country.*

- *British soldiers currently in Kenya are here as part of the regular training programme at British Army Training Unit Kenya (BATUK) agreed with the Kenyan MoD. This routine exercise is completely unrelated to the Kenyan elections, and was planned nine months ago.*

- *The UK does not have a position on the question of how to handle the rejected votes. That is for the IEBC, and if necessary Kenyan courts, to determine.*

*"We urge all sides to ensure calm, avoid inflammatory statements, and to take any disputes to the courts."*

## PROCESSES AT BOMAS OF KENYA.

Lad: and Gentlemen;

We have consistently called for patience and peace among Kenyans at this critical time in the history of our country.

As a Coalition, we continue to call for calm, tolerance and peace among Kenyans.

However, this morning, we have called to express serious reservations about the election exercise and, in particular, the tallying process going on at the BOMAS of Kenya.

Issues of grave concern to us include the following:

1. The failure of the Electronic Voter Identification devices in over 80 per cent of the country.
2. The law requires that voting results be transmitted electronically from Polling stations to the National Tallying Centre before ferrying the actual results from the polling stations to protect them from being doctored. There has been a total failure of the Electronic Vote Transmission system and we have evidence that the results we are receiving have actually been doctored. In some cases, total votes cast exceeds the number of registered voters. For example Bureti, Kajiado South, Runyenjes, Wajir North and Kathiani among others.
3. IEBC's failure to address issues raised by Safaricom on the electronic voter tallying system.
4. Refusal by IEBC to allow CORD agents to witness and verify the tallying at the Bomas of Kenya. In fact they were literally kicked out.

Because of these concerns, we as a coalition take the position that the national vote tallying process lacks integrity and has to be stopped and restarted using primary documents from the polling stations

## CLARIFICATION ON SAFARICOM'S ROLE IN THE MARCH 4TH 2013 GENERAL ELECTIONS

Following numerous queries from the media and in response to public concern, leading integrated communications service provider Safaricom Limited wishes to clarify its specific role with respect to the conduct of the historic March 4th, 2013 General Elections

1. Safaricom was one of several service providers contracted by the Independent Electoral and Boundaries Commission "IEBC" to provide network connectivity for the electronic transmission of electoral results.
2. In accordance with the terms of our contract with the IEBC, Safaricom's responsibilities were twofold, the first was to provide the virtual private network (VPN) for the conveyance of the results from polling stations across the country previously identified as having sufficient mobile coverage to the IEBC's constituency, county and national tallying center infrastructure. The second was to deliver 17,900 original manufacturer warranted handsets to the IEBC for use by polling staff for purposes of transmitting electronic results. Safaricom was neither involved in the supply of the software to be used on the mobile handsets nor the distribution and storage of the devices.
3. The observed traffic on the VPN provided by Safaricom did not exceed 3.5 Mbps at any time. When put in to context this is a small fraction of the 3,000 Mbps traffic we observe at any time in our network.
4. The total number of mobile devices provisioned to be used by the IEBC polling staff to relay results on the Safaricom VPN were 32,000. This represents only 2% of the 1.5 million devices connected to our data network at any given time.
5. Further, it must be clarified that during the entire election period
  - Safaricom's role was simply to provide connectivity between the mobile devices and the IEBC tallying centers. Safaricom did not and does not have any role in the technical design, management or specification of the servers, the mobile software application nor the graphic presentation of the results data used by the IEBC.
  - The Safaricom mobile and virtual private network has remained robust with 100% uptime in all areas where coverage was to be provided.
  - Safaricom has provided unrestricted access to representatives of the 8 presidential candidates to assess and monitor its network performance. All of them were and still are confident in our network quality. As a responsible corporate citizen, Safaricom appreciates and takes seriously its assigned responsibilities and will continue to play its part to support the IEBC in its duties.

**Bob Collymore**  
CEO, Safaricom Limited

6 / 03 / 2019

## ANXIETY OVER PRESIDENTIAL RESULTS FOLLOWING MARCH 4TH GENERAL ELECTION

### Preamble:

The National Council of Churches of Kenya (NCCCK) would like to commend Kenyans for turning up in large numbers to cast their ballots during the historic General Election on Monday this week. The high voter turnout is a clear indication that Kenyans are ready to take charge of the destiny of their Country.

NCCCK notes that so far the election has been peaceful, free and fair. ...

To this end, the Independent Electoral and Boundaries Commission (IEBC) has exercised its constitutional mandate of managing the elections. However due to the rising anxiety in the country regarding the slow pace at which the presidential results are being relayed, the Council wishes to deliver the following message.

### Message to Kenyans:

Fellow Kenyans, it is clear that we all mean well for our beloved country, Kenya. Indeed we have covered enough grounds in advancing our democratic right and building a new Kenya. This was evident on Monday 4th March when we all turned out in large numbers to cast our ballots for various elective positions. This was truly a sign of maturity and expanded democracy that makes our country stand tall among the great Nations of Africa.

NCCCK appeals to all Kenyans to be patient as the counting and tallying process continues. Let us show the world that despite the technical hitches that hampered the electronic transmission of the presidential results we can wait for the manual process of tallying to be completed and results announced.

We all know that we voted for 3 positions, not 3 as we did in the previous elections. That means, the IEBC requires DOUBLE the amount of time to count and tally the election results!

NCCCK appeals to all Kenyans to exercise restraint and be patient, bearing in mind that constitutionally, IEBC has got 7 days to announce the presidential results.

### Message to IEBC:

Kenyans continue to express their confidence in the ability of IEBC to conduct free and fair elections. NCCCK believes in IEBC's ability to deal with the challenges that arise.

However we note with concern that these challenges especially the slow pace of relaying presidential election results have started causing anxiety among Kenyans. We therefore urge you to:

- (i) Fast track the counting and tallying of presidential results;
- (ii) Inform the public honestly and in a timely manner about the process;
- (iii) Continue engaging other actors especially the political parties while counting and tallying the official results.

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ICC-CPI-00130307-PRS73

## Muthaura and Kenyatta case: The trial opening is postponed to 9 July 2013

Situation: Kenya

Case: *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*

Today, 7 March 2013, Trial Chamber V of the International Criminal Court (ICC) decided to grant the Defence teams' requests, to which the Prosecutor did not oppose, and to postpone the opening of the trial in the case *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* and set the new date provisionally for 9 July 2013.

The Chamber considers that, in addition to Defence submissions related to delayed disclosure of information, the Defence teams' applications requesting referral back to the Pre-Trial Chamber raise very serious issues that must be resolved before the trial can proceed and which may not be resolved before 11 April 2013, the date initially set for the opening of the trial.

The Defence teams in the case *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* also submitted requests to postpone the opening of the trial, currently scheduled to begin on 11 April 2013. Trial Chamber V will issue its decision on these requests in due course.

### Order concerning the start date of trial

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For further information, please contact Fadi El Abdallah, Spokesperson and Head of Public Affairs Unit, International Criminal Court, by telephone at: +31 (0)70 515-9152 or +31 (0)6 46448938 or by e-mail at: [fadi.el-abdallah@icc-cpi.int](mailto:fadi.el-abdallah@icc-cpi.int).

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