



**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE  
PRE-ELECTION DELEGATION TO KENYA**

*Nairobi, Kenya, May 5, 2012*

This statement is offered by an international pre-election delegation organized by the National Democratic Institute (NDI). The delegation included: former President of Botswana H.E. Quett Ketumile Masire; Chairperson of the National Electoral Commission of Sierra Leone Dr. Christiana Thorpe; U.S. and global human rights advocate Martin Luther King, III; Nigerian Legal Practitioner and civil liberties advocate Ayo Obe; NDI Senior Associate and Director of Electoral Programs Patrick Merloe; and NDI Senior Associate and Director for Southern and East Africa Dr. Keith Jennings. The delegation visited Nairobi from April 29 to May 5, 2012, and was accompanied by NDI Kenya Senior Country Director Mary O'Hagan and Senior Program Manager Dickson Omondi.

The delegation's purposes were to consider the state of electoral preparedness, review the broader political environment, examine factors that could affect the credibility of the electoral process and offer recommendations to support increased dialogue and consensus building towards peaceful, credible elections.

The delegation held 25 meetings with representatives of the Independent Electoral and Boundaries Commission, National Cohesion and Integration Commission, the Government of Kenya, political parties, and civil society and religious leaders. The delegation conducted its activities in accordance with the laws of Kenya and international standards outlined in the *Declaration of Principles for International Election Observation*. The Institute recognizes that, ultimately, it will be the people of Kenya who will determine the credibility of their elections and the country's democratic development. The delegation therefore offers this pre-election statement in the spirit of supporting and strengthening democratic institutions and processes in Kenya.

**SUMMARY AND RECOMMENDATIONS**

Remarkable progress has been accomplished in reforming the framework for Kenya's elections, of which citizens can be proud. Nevertheless, immediate and concerted efforts are needed to prevent political violence and to remove uncertainties in the electoral environment that could threaten the integrity of elections.

The great hope that Kenyans draw from the 2010 Constitution and related reforms, which constitute an extraordinary positive effort, is being challenged by delays in completing elements of the required enabling legislation, inaction by the executive branch in some key areas, troubling incidents of violence which may be politically-motivated and incitement of ethnic tensions. All sectors of Kenyan society – and particularly political leaders – should focus sharply and work diligently at this stage to ensure that the potential for peaceful, credible elections is realized.

Political, religious, business and civic leaders, including youth leaders, and the media all have crucial roles to play in promoting peace, demonstrating the will to prevent political violence and corruption of the elections. Every effort should be made to prevent the ongoing proceedings at the International Criminal Court from polarizing the situation further. The international community also should play its role in discouraging violence and encouraging peaceful, credible elections. Most important, Kenyan citizens must demonstrate their goodwill and demand a clean break from “electoral lawlessness”, including political violence, vote buying and other practices that subvert democratic elections and deflect attention and resources away from improving people’s lives.

Based on its interactions with various Kenyan stakeholders and the experience of the delegation members and NDI, the delegation respectfully offers the following recommendations for consideration, doing so in the spirit of international cooperation.

### **To the Parliament and Government:**

To remove uncertainties that can impair fair elections and undermine public confidence, on an expedited basis, enact the required enabling legislation and take executive actions to complete the constitutionally mandated framework for peaceful, credible elections, including the following:

- 1) **Commitments and Pleas for Peace, Tolerance and Credible Elections:** Government and political leaders, including the President, Prime Minister, presidential aspirants and party officials should, jointly and separately, publicly issue forceful and frequent commitments to renounce and prevent politically motivated violence, hate speech and incitement to ethnic and tribal animosities, as well as issue pleas to citizens to refrain from and prevent election-related violence under any circumstances;
- 2) **Election Date:** Settle promptly the election date, which is vital for successful election planning by the Independent Electoral and Boundaries Commission (IEBC), preparations of electoral contestants and for reinforcing public confidence; the President, the Prime Minister, Parliament and political parties should settle uncertainties about the election date;
- 3) **Enfranchisement:** Promulgate immediate, effective measures to remove barriers to young people, internally displaced persons (IDPs) and other marginalized populations from becoming registered voters and party members, due to problems in establishing citizenship and obtaining national identity cards and, thus, registering as voters. These actions are essential for realizing the Constitution’s Bill of Rights and for eliminating political volatility that results from disenfranchisement; special attention should be given to IDPs, who are the victims of the 2007-08 election-related violence, and to the millions of young Kenyans who are not registered;
- 4) **Gender Requirements:** Promulgate measures to implement the Constitution’s provisions that “not more than two-thirds of the members of elective or appointive bodies shall be of the same gender”, particularly as this applies to the next elected parliament, which measures are needed to promote the constitutional principle of achieving gender equity and to avoid legal challenges to the legitimacy of the next parliament;
- 5) **Integrity of State Officers:** Promulgate the law that is needed to implement the Constitution’s Chapter Six provisions on leadership and integrity of State officers, which, among other things, is essential to removing uncertainties about qualifications of candidates for elected office;
- 6) **1st Round Disputes:** Establish effective and timely means to resolve disputes arising from the first round of presidential elections, should a runoff be required, so that the

presidential election is not derailed due to legal gaps; this should include stipulating which court has jurisdiction, expedited procedures and timelines for a presidential runoff election;

- 7) **Civic and Voter Education:** Support and sponsor vigorous civic and voter education efforts, so that citizens may fully understand the constitutional changes, the importance of voting and the imperative of striving for peaceful, credible elections; subjects should be the changes in the electoral system, the bodies, offices and powers of the county level governance, as well as issues related to preventing politically motivated violence, hate speech and prosecution for such offenses;
- 8) **Registrar of Political Parties:** Fully empanel with exceptionally competent persons and adequately resource the Office of the Registrar of Political Parties, which is needed to realize the goals and implementation of the Political Parties Act of 2011, and fully support the efforts of the current Registrar of Political Parties until the new independent office is established;
- 9) **Campaign and Party Financing:** Enact expeditiously the campaign financing regime, which is needed well in advance of elections to ensure a fair playing field and deter the corrosive effects of illegal use of money in politics; also, ensure timely disbursement of public funds to political parties as provided in the Political Parties Act;
- 10) **Security Against Political Violence:** Prioritize and implement measures to ensure security against politically motivated violence, including training of security personnel, risk mapping, timely investigations, arrests and prosecutions to protect political rights and break expectations of impunity among organizers and perpetrators; measures should address specific security needs of women, youth, persons with disabilities and other traditionally marginalized populations as candidates, campaigners and voters;
- 11) **Police Commission and Reform:** Fully empanel with exceptionally competent persons and adequately resource the National Police Service Commission and pursue vigorously police reforms in order to reinforce public confidence; the police and other security forces should maintain their independence and political impartiality, avoid perceptions of bias, respond promptly to complaints, and facilitate the safe participation of all citizens in the electoral process; and
- 12) **National Cohesion and Integration Commission:** Take necessary steps to ensure that the continuity and capacities of the National Cohesion and Integration Commission (NCIC) extend beyond the elections and that the terms of its members are staggered for continuity and sustainable capacities in the future; fully fund and support the Commission's campaigns for peace, hotlines to expose potentials for violence and pursue vigorously its calls for prosecutions.

### **To the Political Parties:**

To build public confidence, increase the integrity of political parties and candidates and promote peaceful, credible elections, parties and, as applicable, candidates should take the following steps:

- 1) **Compliance with Political Parties Act and Elections Act:** Establish internal party units to ensure compliance with the 2011 Political Parties Act and the 2011 Elections Act, conduct education of all party officials and members concerning the requirements of the Acts, including their codes of conduct and provisions concerning offences, as well as establish an effective means to enforce among party members compliance with the Acts;
- 2) **Representativeness of Parties:** Use new membership and branch networks to enhance the representative role of political parties, especially in the development of responsive

policies required for issue based politics; simultaneously reach out vigorously to women, youth, persons with disabilities and other traditionally underrepresented populations to become party members and candidates;

- 3) **Internal Codes of Conduct and Anti-Violence Pledges:** Require as a condition for holding party office, standing as a candidate and maintaining party membership, pledging to faithfully uphold the Political Parties Code of Conduct, in particular not organizing, inciting or participating in politically motivated violence, hate speech or ethnic animosities;
- 4) **Respecting the Authority of the IEBC and the RPP:** Recognize the authority and critical role of the IEBC and Registrar of Political Parties by, among other things, sending high level officers to the national Political Party Liaison Committee (PPLC) and correspondingly high officials to the county level PPLCs; report to the IEBC any infractions of the laws and codes of conduct regarding elections;
- 5) **Enfranchisement:** Press for immediate and effective steps to remove barriers to voter registration, candidacies and voting of women, youth, IDPs, persons with disabilities and other traditionally marginalized populations and actively promote voter registration and turnout of the party's or candidate's supporters, while respecting the rights of others to register and to vote;
- 6) **Vote Buying:** Take effective measures to ensure that party members and candidates, desist from "treating" and any other form of buying votes, purchasing voter registration cards of any voter, or other actions to prevent them from voting, or otherwise coercing voters through economic incentives or threats of reprisals;
- 7) **Listing of Party Members:** Take effective measures to ensure that no person is listed incorrectly as a party member, thereby preventing that person from belonging to another political party or standing as a candidate for elected office; and
- 8) **Issue-Based Campaigning:** Engage the public through electoral appeals based on addressing issues that are important for improving conditions for citizens and eschew personal attacks and exacerbating divisions in the population.

### **To the IEBC and Registrar of Political Parties:**

To maintain and build even further public confidence, dispel potential for suspicion and ensure effective administration of peaceful and credible elections, the IEBC and Registrar of Political Parties should take the following measures:

- 1) **Verifying Party Member Lists:** Provide an easily accessible means for citizens to verify that their name appears on the membership list of the political party of their choice or that it is not on any such list, and provide to each political party an electronic copy of its membership lists in a format that allows easy reorganization of the list for the party's own purposes; and
- 2) **Enforcement of Political Parties Act:** Set up a system to effectively monitor and enforce ongoing compliance with all aspects of the Political Parties Act;
- 3) **Public Outreach:** Engage proactively with the media, political parties, concerned civil society organizations and citizens via public meetings, news conferences and social media, regarding pending decisions, actions taken and other matters (e.g., incidents, real or rumored, that could affect public confidence or escalate tensions);
- 4) **Voter Education:** Expand and intensify nationwide voter education campaigns, including engaging media, civil society organizations and political parties about their efforts to educate voters and motivate turnout for voter registration, voting and ensuring peaceful, credible elections; particular attention should be paid to increasing

understanding and encouraging voting for women, youth, IDPs, people with disabilities and other traditionally marginalized populations, as well as addressing the complexities of the new electoral system;

- 5) **Electoral Regulations:** Issue promptly, upon consultation with political parties and other stakeholders, regulations integral to implementing the 2011 Elections Act and Political Parties Act, publicize them well in advance of the next general elections and sensitize the electoral contestants and the public; these affect among other things diaspora voting, voter registration, party nominations, independent candidates, campaigns and election-day polling, counting and tabulation of results, conduct of a possible runoff in the presidential election, as well as participation of party agents and election observers;
- 6) **Diaspora Voting:** Prioritize consultations with political parties and civil society and clarify all issues related to voting by the Kenyan diaspora, including which office or offices will be the subject of voting, the places for voting, the means of voter registration and how the process will be observed by political parties, and nonpartisan Kenyan and international observers;
- 7) **Enfranchisement:** Immediately convene relevant governmental agencies to coordinate actions needed to ensure all barriers are removed for the registration and voting by youth, IDPs, women, people with disabilities and other traditionally marginalized populations;
- 8) **Violence Prevention:** Prioritize measures to prevent election-related violence throughout the election cycle as well as on election day and the results determination period by developing risk identification and response plans, maximizing cooperation with police and other public law enforcement agencies through the Election Security Committee and other means, liaising with the NCIC and District Peace Forums, cooperating with efforts of civil society and religious groups, such as the Conflict Management Panels, as well as using the PPLC at national and county levels;
- 9) **Breaking Impunity:** Establish capacities and exercise the IEBC's authority provided in the 2011 IEBC Act to enforce the Electoral Code of Conduct for candidates and parties contesting elections, to investigate and prosecute electoral offences, and hold IEBC personnel accountable for misfeasance and malfeasance that undermines electoral integrity; maximize such authority in cooperation with appropriate governmental agencies;
- 10) **Party and Independent Candidate Liaison:** Fully implement the PPLC functioning at the national and county levels as an active forum for dialogue with and among the parties, concerning administration of the elections and problems confronting the achievement of peaceful, credible elections; interface, as appropriate, with peace-building efforts and IEBC public outreach initiatives; integrate independent candidates as appropriate at national and county level;
- 11) **Facilitate Observation, Monitoring and Evaluation:** Enhance interaction with relevant civil society organizations through regular, structured consultations and information sharing, such as the IEBC's Civil Society Forum, and set up a specific liaison process with citizen election observation organizations and ensure their access to all aspects of the electoral process, including those needed for verification of procedures; and
- 12) **Transparency and Independent Verification of Key Processes:** Ensure accuracy and public confidence in the implementation of biometric voter registration, voting, counting, tabulation, transmission and reporting of results by providing access for political party and candidate agents, citizen and international election observers and the media to those processes, including to the design and testing of software and systems. Provide access to the voter register, provide copies of tally sheets from each level of results tabulation to candidate and party agents and observers, post publicly such tally sheets at the location of

such procedures, and post publically aggregated and disaggregated results down to the initial counting location (polling site or stream).

### **To the Media:**

To promote peaceful, credible elections and to further rebuild public confidence in their roles, the media should take the following steps:

- 1) **Professional Ethics Standards:** Take effective measures to educate all media personnel and to enforce within their respective media organizations adherence to the Media Council of Kenya's Guidelines for Election Coverage and/or substantially similar guidelines and rules of other professional associations and individual media organizations, the hate speech guidelines issued by the NCIC and laws of Kenya, and in accordance with professional standards provide accurate information to enable voters to make free and informed electoral choices;
- 2) **Civic and Voter Education:** Enhance citizen understanding and participation in transparent elections by conducting civic and voter education campaigns in accordance with the IEBC curriculum, including anti-violence messaging, information about the new governmental structures and the electoral system, the importance of voting, as well as when, where and how to register and to vote; and
- 3) **Debates and Forums:** Sponsor debates and other forums among electoral candidates based on issues that are important to improving the conditions of citizens and call on candidates to condemn hate speech and incitements to violence.

### **To Civil Society and Religious Organizations:**

To better safeguard peaceful electoral competition and promote public confidence in the credibility of the electoral process as warranted, civil society and religious leaders and organizations should take the following steps:

- 1) **Coordination:** Enhance cooperation and coordination, including information sharing, among the various non-governmental initiatives in peace-building, early warning, incident mapping and election observation, and engage actively with efforts of the IEBC and other governmental agencies in ensuring peaceful, credible elections;
- 2) **Exercise Moral Authority:** Issue regular calls for a non-violent political environment and clean campaigns by all political contestants; exercise their moral authority with political leaders and, through grassroots structures and outreach to citizens – particularly youth – to participate constructively in the political process and shun the use of violence; use voices such as the Inter-Religious Council of Kenya (IRCK) and various civil society forums to amplify these messages;
- 3) **Credible Election Observation:** Implement nonpartisan, systematic observation of electoral processes in order to provide accurate, timely characterizations of critical elements of the elections – including particularly the quality of voting, counting, tabulation and results reporting (through independent verifications such as Parallel Vote Tabulation) – so that the public can have confidence in the process as warranted and reject unfounded claims; monitor over the long term the electoral environment through credible methodologies, encourage the participation of citizens in the electoral process and campaign vigorously for peaceful, credible elections;
- 4) **Civic and Voter Education:** Conduct widespread civic and voter education campaigns using techniques that relay information effectively to enhance citizen understanding and

participation in peaceful, credible elections, including anti-violence messaging, information about the new governmental structures and the electoral system, the importance of voting, as well as when, where and how to register and to vote; and

- 5) **Enfranchisement:** Advocate the removal of all barriers and effectively promote voter registration and voting by youth, IDPs, women, people with disabilities and other traditionally marginalized populations.

### **To the International Community:**

To demonstrate the international community's support for peaceful, credible elections in Kenya, take the following steps:

- 1) **Encourage Stakeholders to Act Urgently:** Encourage all Kenyan stakeholders to take steps outlined above as quickly as possible, particularly those addressed to the Parliament, Government, IEBC and political parties;
- 2) **Support Initiatives:** Encourage and support, through financial and technical assistance, the IEBC, various commissions, other bodies and media, civic and religious organizations to take the steps outlined above;
- 3) **Recognize Kenya's Accomplishments:** Speak out to encourage Kenyans to take pride in their accomplishments such as adopting a forward-looking constitution and instituting ambitious reforms and to resolve to achieve peaceful, credible elections in accordance with the letter and spirit of Kenya's Constitution; and
- 4) **Support International Voices:** Support credible international observation of Kenya's election process and responsible international media coverage of it as well as efforts to promote a peaceful political environment.

The delegation was struck by the determination of those with whom it met to use the upcoming elections to break with the consequences of the 2007-08 electoral tragedy, advance the quality of the country's democratic process and place Kenya among the world's leading democratic examples.

*The delegation is grateful to all those who gave their valuable time to meet with the delegation. Their perspectives have informed this statement and made possible the work of the delegation. NDI stands ready to continue to assist Kenyan efforts to build and sustain democratic practices, institutions and values. The delegation's visit was supported through a grant from the United States Agency for International Development.*

### **DELEGATION OBSERVATIONS**

An accurate and complete assessment of any election must take into account all aspects of the process, and no election can be viewed in isolation from the political context in which it takes place. It should also be noted that no electoral framework is perfect, and all electoral and political processes experience challenges.

Among the factors that must be considered are: the legal framework for the elections set by the constitution, including electoral and related laws; the ability of citizens to seek and receive sufficient and accurate information upon which to make political choices; the ability of political competitors to organize and reach out to citizens in order to win their support; the conduct of the

mass media in providing coverage of parties, candidates, and issues; the freedom that citizens and political competitors have to engage in the political and electoral process without fear of intimidation, violence, or retribution for their choices; the conduct of the voter registration process and integrity of the voter register; the right to stand for election; the conduct of the voting, counting, results tabulation, transmission, and announcement of results; the handling of election complaints; and the installation to office of those duly elected.

A new constitution was enacted by Kenyan citizens in 2010, which through its Bill of Rights, creation of institutional safeguards and other provisions, provides a sound basis for proper elections and democratic governance. New constitutional institutions, though nascent, are established or in development, and the 2011 Elections Act, Independent Electoral and Boundaries Commission Act and Political Parties Act have been promulgated, forming much of the legal foundations required for proper elections. The IEBC was empaneled through a transparent and rigorous process that established public confidence, building on that of its interim predecessor Commission and the credibility of its Chairman, who carried over along with one other member of the interim body. Other factors include: substantial progress in judicial reform, mobilization of civil society and religious organizations to promote and safeguard peaceful and proper elections; promotion of hate speech guidelines by the NCIC and adoption of guidelines for election coverage by the Media Council of Kenya; and actions by political parties to enhance dialogue among themselves and engage through the IEBC's PPLC, Inter-Party Youth Forum (IPYF).

Nonetheless, gaps in the electoral framework, problems in the electoral environment, including a number of violent incidents which may have been politically motivated, and speech that exacerbates ethnic and tribal animosities pose important challenges that require urgent action from all sectors of Kenyan society.

**Legal Framework for Elections:** The passage of the new Constitution in August 2010 was a milestone in Kenya's political development. The Constitution provides a framework and timelines for developing and implementing reforms that will overhaul the political system and prepare the nation for the next general elections. Important steps have been taken to redress longstanding grievances resulting from a flawed system of governance and the weaknesses identified by the Independent Review Commission (IREC) that inquired into all aspects of the 2007 disputed general elections. The Constitution enunciates the rights of all Kenyans to participate in the elections and referenda. It provides measures to streamline and strengthen the management of elections and referenda, and to recognize the essential roles of political parties in consolidating democratic governance. The Constitution also creates a bicameral parliament at the national level, county governments and assemblies at the local level, introduces affirmative action and increases the number of single member constituencies from 210 to 290. Steps have been taken to promote participation of traditionally excluded groups in the electoral process. The delegation commends these measures, which demonstrate the progress achieved by Kenyans to improve the political and electoral process.

Despite numerous challenges and delays, relevant Kenyan institutions and stakeholders have worked diligently to enact legislation that is required to operationalize the Constitution. The enactment of the IEBC Act 2011, the Political Parties Act 2011, and the Elections Act 2011 are important steps to ensure that the framework for elections is put in place ahead of the next elections.



The delegation supports the views of the representatives of political parties, civil society and Government of Kenya, with whom they met, for urgent measures to finalize the legal framework for elections. In particular, the delegation has noted the views of Kenyan stakeholders calling for the enactment of outstanding legislation to regulate campaign financing, to implement the gender requirements for elective public bodies as outlined in Article 81(b) of the Constitution, and to implement requirements of leadership and integrity.<sup>1</sup>

The delegation has also noted concerns surrounding gaps, uncertainties and ambiguities in the legal framework for elections. While the delegation noted that the legal framework for a possible runoff in the presidential election needs to be clarified, it is important to avoid wholesale revision of the laws already enacted this close to the elections, which could undermine the efforts of the IEBC, parties, candidates and others to prepare adequately.

The question on the date for the next general elections has proved divisive. Significant efforts have been made to address this, including the Court ruling on January 13, 2012, and the subsequent announcement of an election date by the IEBC. Key milestones in the election process are calculated backwards from that date. These include the finalization of the voters roll, the submission of party nomination lists, the resignation of public servants aspiring as candidates for elections, eligibility of independent candidates and the period of campaigns. It is essential that the election date issue is resolved in a way that insulates the IEBC from claims of partisanship.

**Election Administration:** Significant efforts have been taken to streamline management of elections in Kenya as recommended by the Independent Review Commission (IREC) of the 2007 Kenya elections. The 2010 Constitution established a new electoral body, the IEBC, to plan and manage the next elections. Following a competitive, public recruitment process, nine commissioners were appointed to the IEBC. Further, the legal framework has established the Political Parties Liaison Committee (PPLC) as a statutory body to enable structured dialogue and consultations between political parties, the office of the Registrar of Political Parties, and the IEBC. The delegation commends these efforts.

The IEBC has provided information to the public on various steps they have taken, are working diligently on voter education activities, and have been actively engaged in consultations with the political parties through the PPLC. The delegation notes that the credibility of Electoral Management Bodies (EMBs) and overall confidence in the electoral process is dependent upon the degree to which decisions are based on broad consultations with key stakeholders, and the level of public awareness and participation in the process. In particular, regular structured dialogue with political parties and civil society organizations, particularly those engaged in election observation, provides an opportunity to broaden transparency and accountability.

The delegation notes that the predecessor Interim Independent Electoral Commission (IIEC) enjoyed a significant amount of public trust and adopted important measures to increase transparency and accountability in the electoral process. The IEBC will need to continue to build on these efforts in order to manage public expectations of an even more transparent and accountable electoral process. The IEBC needs to undertake continuous measures to build public awareness on planning for the next elections, and to provide as much information as possible on all aspects of election administration, including explaining the introduction of new technologies.

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<sup>1</sup> Chapter Six of the Constitution outlines principles of leadership and integrity.

**Political Parties:** For the first time in Kenya's history, the Constitution formally recognizes political parties as essential institutions of governance. This underscores the role that political parties are expected to play in consolidating democratic governance. Article 91 of the Constitution requires that all political parties must: have a national character and a democratically elected governing council; abide by democratic principles of governance; organize regular party elections; and respect the rights of all persons to participate in the political process.<sup>2</sup> The Political Parties Act provides further guidelines on the registration, management, public funding, and regulation of political parties. The Political Parties Act requires all political parties in existence prior to its commencement date to re-apply for registration. This requirement will help to enforce the new guidelines for political party management. Accordingly, all political parties were required to comply with the Political Parties Act by April 30, 2012, in order to be fully registered.

The delegation recognizes the efforts of the acting Registrar of Political Parties, the IEBC, other statutory institutions, political parties, and civil society to improve the framework for the registration, management, public funding, and regulation of political parties. The delegation was impressed by the commitment of young political party leaders involved with the Inter-Party Youth Forum. The example of inter-party communication being set by these young leaders should be in assistance to the run up to the elections that political competition need not involved enmity.

The delegation encourages all relevant stakeholders, and in particular the political parties, the office of the Registrar of Political Parties, and the IEBC to take all necessary steps to ensure the implementation of the Political Parties Act 2011, within an environment that embraces dialogue, consultations, and consensus building. Political parties have taken significant steps to comply with requirements of the Political Parties Act. However, the delegation noted concerns from the political parties that the public funding provisions may not be fully implemented prior to the elections.

The delegation, however, notes that the process of party registration has been marred by the claims of fraud and exclusion of citizens without voter IDs. In particular, the delegation notes with concern that some citizens may have been registered as party members without their knowledge and consent. If this is the case, significant challenges will arise with regard to the nomination of candidates, the formation of party lists, eligibility of independent candidates, and the collection of signatures for candidates. Urgent steps are therefore required to enable citizens to know whether or not they have been registered as party members for the purpose of party registration. The delegation notes that the successful implementation of the Political Parties Act should be viewed as a continuous process rather than an event. Ongoing efforts are therefore required to ensure that compliance is sustained, and to avoid weakening the legal framework.

**Registration of Voters and Issuance of National Identity Cards:** The Constitution of Kenya guarantees the right of all Kenyans who are aged 18 or older to register as voters. The IEBC is mandated to register voters to participate in elections. Amongst the criteria for registration as a voter, the IEBC requires proof of citizenship, demonstrated by either a national identity card or a passport. The Ministry for Immigration and Registration of Persons is responsible for the issuance of national identity cards. The failure to harmonize the issuance of national identity

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<sup>2</sup> The requirement for parties to have a national character is expected to counter regional or ethnic based political parties. According to the Political Parties Act, parties are therefore required to have registered at least 1000 members in a minimum of 24 out of the 47 counties. The membership is also required to reflect regional and ethnic diversity.

cards and voter registration has historically resulted in the disenfranchisement of youth. Bureaucratic processes and administrative delays have been cited as some of the factors responsible for this disenfranchisement. The perceived politicization of the issuance of national identity cards in order to deny certain groups' participation in the electoral process is yet another challenge.

In July 2011, news reports indicated that approximately four million youth were in danger of disenfranchisement due to non-issuance of national identity cards. This was attributed to inadequate material resources to facilitate registration and to issue identity cards, which had resulted in the Ministry's suspension of issuing new national identity cards between January 2011 and July 2011. While the process has since resumed, it is believed that millions of youth remain under threat of disenfranchisement. In a recent public interview, the Minister for Immigration announced that the Kenya Citizens and Foreign Nationals Management Service was being constituted to manage the registration of persons, and to integrate registration services. The Minister also announced a target of issuing a further three million identity cards to reach a total of five million new cards before the next general elections. This was to be achieved through intensive registration efforts, including mobile registration. Concerns were expressed to the delegation that this number would be insufficient to enfranchise the voting age population.

To facilitate the effective participation of youth and other under-represented groups in voter registration, urgent steps are required to speed up the issuance of national identity cards. This will require the provision of adequate material and human resources to clear the backlog. Further, the distribution of issued identity cards should be strengthened through adoption of multiple avenues. The reliance on the provincial administration system – through chiefs – to distribute the national identity cards has left the process prone to political manipulation. In the long-term, the harmonization of the issuance of national identity cards with voter registration will help address problems with the registration of youth voters in a more sustainable manner.

**Security Sector Reforms and Preparations for the Next General Elections:** *Commission of Inquiry into the Post-Election Violence (CIPEV) Report.* The CIPEV was mandated, among its other functions, to investigate the actions or omissions of state security agencies during the 2007 post-election violence and to make recommendations as necessary. There is widespread belief that the role of Kenya's security agencies in the 2007-08 Post Election Violence (PEV) exacerbated the crisis. The key findings of the CIPEV indicated that the police were inadequately prepared to deal with the violence around the elections. The report specifically cited: lack of professional, timely and quality planning; poor investigative capacity; absence of joint operational arrangements between the various State Security Agencies (SSAs); and failure to act on available intelligence.

CIPEV made three key recommendations related to the police: 1) comprehensive reform of the Kenya Police Service and the Administration Police; 2) enactment of an Independent Police Conduct Authority Act that would establish a body with oversight authority of police; and the integration of the Kenya Police Service and the Administration Police into a single entity under the command of the Police Commissioner. CIPEV further recommended that measures be taken to uncouple the Police Service from the provincial administration structures. To implement these reforms, CIPEV recommended the establishment of a Police Reform Group (PRG), consisting of independent groups of experts - that would work independently alongside the Kenya police.

*Reforms to Police Services.* A number of CIPEV's recommendations have been implemented. The 2010 Constitution establishes a National Police Service, integrating the Kenya Police

Service and the Administration Police, to be headed by an Inspector General of the National Police Service, appointed by the President with the approval of Parliament. Article 245 of the Constitution confers authority on the Inspector General to independently command the Kenya Police Service and Administration – free of political influence - particularly with respect to the investigation of offenses, and the enforcement of law.

Efforts around the 2010 Constitutional referendum involved proactive government deployment of security to hotspots, and provided a basis on which to build future effective efforts. The Ministry for Internal Security has also anticipated the need for more security around the elections – with the number of polling stations to increase to approximately 45,000 – and has recently announced plans to recruit and train additional officers.

*Delayed Implementation.* While the National Police Service Act was enacted in 2011, there has been a delay in its implementation. The Act has not yet been published by the Government Printer thereby creating the perception that this is to delay implementation, particularly the appointment of a new Inspector General (which must be done within 14 days of publication). Some senior police officers have openly opposed the possible appointment of a civilian Inspector General, raising fears of a lack of commitment to reforms.

Further, the appointment of a National Police Service Commission, a requirement outlined in the 2010 Constitution, has stalled. The Commission would be responsible for: recruitment, transfers and promotions within the National Police Service; exercising disciplinary control; and other functions prescribed by law. While six proposed commissioners were approved by Parliament and the President, the Prime Minister raised concerns about the names submitted for the Police Service Commission. A court injunction was issued to stop the appointment process. As a result, efforts to reform and restructure the Kenya Police Service have been frustrated. Fears were expressed to the delegation that the police service will not be able to adequately prepare for the next general elections, in line with recommendations of the CIPEV. Moreover, there has been no action to appoint the Civilian Oversight Authority that is expected to lead reforms and maintain oversight over the police.

**The Role of Media:** The media, in the disputed 2007 elections, came under intense criticism, with claims that some sections exacerbated and even incited the violent aftermath. Two key areas of concern have been raised with respect to the role of the media. First, the skewed coverage by public broadcaster Kenya Broadcasting Corporation (KBC) in favor of the ruling party was criticized for creating an uneven playing field. Second, a weak legal and institutional regulatory framework was blamed for failure to ensure professional conduct and ethical reporting. The conduct of the media, particularly the privately owned vernacular FM radio stations, was criticized for flaming tensions in the country. Moreover, there were concerns over media ownership by politicians and failures of self-regulation.

IREC made recommendations to strengthen the legal and institutional framework for media regulation. The recommendations aimed to ensure professional conduct through oversight by the Media Council of Kenya. Further, they provide for equitable coverage by state media of all political parties and contestants. IREC also recommended the enactment of legislation prohibiting hate speech, which was subsequently incorporated into the NCIC Act (2008), while the Kenya Communications Amendment Act (2009) also addressed some of the challenges on media regulation. The Act provided for the formation of a Broadcasting Content Advisory Council, which was inaugurated in June 2010.

Article 34 of the Constitution guarantees the independence of the media, and provides that all state-owned media shall operate independently and impartially and afford opportunity for the presentation of divergent views and opinions. The Constitution also empowers parliament to enact legislation to establish an independent body responsible for setting media standards, regulating media and ensuring compliance with the set standards. The Media Act of 2010 provided for the establishment of the Media Council of Kenya, and gave it the responsibility for regulating the conduct of media.

*Strengthening Regulation of Media.* The establishment of the Media Council of Kenya to regulate the industry is a positive step towards ensuring professional conduct of the media, and on May 3, 2012, it published guidelines to help ensure professional conduct and reporting ahead of the next general elections. There remains a need to build its capacity to effectively regulate the media industry and in particular to monitor media content and the code of conduct of journalists. In particular, adequate resources should be devoted to monitoring for inflammatory messages.

The delegation heard concerns from the political parties and others about the role the media may play during the upcoming election. In particular, they expressed a need to ensure fair coverage and to avoid incitement, particularly on vernacular radio stations.

**Civil Society:** Kenyan civil society has played an active role in the restoration of the democratic process. Current efforts underway include civic and voter education, election observation and violence monitoring.

Kenya has a history of violence around elections, much of which has assumed ethnic dimensions. The violent aftermath of the disputed 2007 general elections, however, represented an increase in the magnitude and scale of the problem. Since 2008, civil society organizations and faith-based groups have reflected on the contribution they can make to prevent future election-related violence and important changes are taking place in terms of coalition-building and the application of new methodologies and technologies, both for explicit conflict mitigation and domestic election observation. It is essential that the voice of civil society is heard, delivering regular, impartial reports throughout the electoral process.

*Election Monitoring Efforts.* There were a number of efforts to monitor violence around the 2010 constitutional referendum, by both government institutions and civil society. The National Steering Committee on Peace Building and Conflict Management (NSC), created as part of the Agenda 4 recommendations, established a process to monitor violent incidents during the referendum. The NSC, NCIC, PeaceNet Kenya and the United Nations Development Programme (UNDP) established UWIANO (Swahili for “cohesion”), an online peace platform for citizen reporting of violence. The four partners plan to scale up this and other peace-building and conflict management initiatives towards the next general elections and beyond. Another online platform, Uchaguzi, also helped in these efforts. In April 2010, the Elections Observation Group (ELOG) was formed by several civil society and faith-based organizations as a permanent platform for election observation in Kenya. As part of its observation efforts, ELOG fielded observers to all of Kenya’s 210 constituencies. They successfully piloted Parallel Vote Tabulation to verify the tallying of the results and provided feedback on the voting, counting and tallying process within 24 hours of the closing of the polls. Other efforts from civil society included Uraia, a broad umbrella civil society coalition which provided nationwide voter and civic education. A number of additional efforts focusing on monitoring the electoral process, including violence around the elections are planned for 2012 and 2013. ELOG has adopted a plan for long term thematic observation and is preparing to conduct Parallel Vote Tabulation and

extensive monitoring of the voting and counting process on election day. The Constitution Reform Education Consortium (CRECO) has produced a baseline report on conflict mapping in all 47 counties and will conduct long-term monitoring of violent incidents. Under the auspices of ELOG, CRECO will coordinate the deployment of 1,450 Long-Term Observers (LTOs) to monitor and report on violence across the country. The NCIC, PeaceNet, the IEBC and a number of government agencies have also jointly re-launched the UWIANO platform. UNIFEM is also planning to launch a monitoring effort of gender-based violence around the elections. These efforts to monitor violence are complemented by similar intervention to mitigate the potential for conflict that include the *My Kenya campaign*, led by the Kenya Private Sector Alliance.

The delegation noted concerns raised by Kenyan civil society organizations about an apparent lack of political will to implement the new legal framework for elections. In addition, they heard concerns about increasing polarization of the country along ethnic lines, including possible ethnic zoning of the country in the lead up to the election campaign. Fears were expressed about a risk of partisanship on the part of the police and state apparatus in the run up to the elections. Also, concerns were expressed to the delegation about violence, the non-resettlement of IDPs, youth unemployment and poverty. The delegation also noted some of the leading religious organizations, for example the Inter-Religious Council of Kenya, are planning to come together, to implement conflict mitigation programs; also wider efforts are being made to co-ordinate civil society activities. This includes the UWIANO platform, efforts by ELOG to co-ordinate observation standards and openness on the part of both the IEBC and election observation groups to engage in much-needed information sharing and consultation on a regular basis.