

LegitimiSation or DelegitimiSation of Electoral Process: Role of Domestic Electoral Observers (K- DOP¹) in Kenya's 2002 General Elections

Wole Olaleye

email: wole@eisa.org.za

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Introduction

Recent decades in Africa have witnessed movement from authoritarian regimes toward popular democracy through electoral rule. The last general election (2002), which is the third multi-party election in 10 years in Kenya, is in many ways another great leap in the wave of regime changes being experienced on the continent. Elections play a key factor in regime transition and in almost all elections taking place in the continent local and international election observations are now a usual practice including the 2002 controversial presidential election in Zimbabwe.

Local observation inevitable carries with it a measure of political significance because observers do not merely serve as windows into election process but observation affects the observed, even when observers attempt to remove themselves from any involvement in the observed process. Does election observation signify a reflection of lack of regime legitimacy and political trust as well as an incomplete democratisation process?

This contribution is structured in three parts: political context of observation, K-DOP's scope of observation, and monitoring of the electoral process.

Elections in the context of Kenya

The National Rainbow Coalition (NARC), the newly elected party, led a coalition of opposition, which won the most parliamentary seats (134) and the presidential seat in 2002, was formed in October 2002 with the defection of KANU ministers after Uhuru Kenyatta was hand picked by Arab Moi as his preferred successor. Moi's choice of Uhuru Kenyatta angered top KANU ministers, who were of the view that Moi's

¹ K-DOP, the Kenya domestic observation programme is an initiative of the Kenya Episcopal Conference (KEC)/Catholic Justice and Peace Commission (CJPC), the National Council of Churches of Kenya (NCCCK), the Supreme Council of Kenya Muslims (SUPKEM), the Hindu Council, the Institute for Education in Democracy (IED), the Media Institute (MI) and Transparency International-Kenya (TI-K) committed to "free and fair and peaceful" elections in Kenya.

successor would be elected through a secret ballot at the party's nomination convention. Moi's refusal led the ministers to form a breakaway coalition (Rainbow coalition) within KANU. The breakaway led by Raila Odinga, former head of the largely Luo National Development Party left to joined the Liberal Democratic Party (LDP). Consequently, thirteen opposition parties, representing different geographical regions in Kenya and all of the major ethnic groups, came together to form the National Alliance Party of Kenya (NAK). Both LDP and NAK came together in October 2002 to form what many has described as a super-opposition NARC with Mwai Kibaki (Democratic Party Chairperson) chosen as the only presidential candidate and Odinga as a prime minister candidate. The 2002 general elections was more a personality and ethnic² contestation than an ideological contest between political parties. For the first time in history of Kenya's election we witnessed family members competing against each other on different political party platform for constituency seats.

The scope of the K-DOP election observation

By comparison, the role played by K-DOP during the election is best described as extensive, intensive and systematic. It gave the citizens greater opportunity for participation and ownership over the process. K-DOP deployed approximately 20,000 citizens as poll watches across 420 constituencies country-wide, covering every polling station³ and polling stream available and participated at every level of the electoral process, from registration through counting of ballot papers. K-DOP on the election day assessed the fairness of the entire election process, playing more extensive, intensive and systematic roles.

The K-DOP strategic board comprised six representatives from each participating organisations/agencies was responsible for providing the overall strategic direction to the programme, issuing regular monthly statement on the election process, the political environment and for releasing the final report of the observation. Each strategic board member is given a portfolio: the representative of the **NCKK** was given the **technical portfolio**, which is to provide a forum for the discussion and agreement on the technical issues such as developing training kits and curricula for observers, drafting the national deployment plan, the code of conduct for K-DOP observers, programme timetable, terms of reference for the field personnel and observers to be recruited, the poll watchers manual and the observation report forms; the **IED and the Media Institute** were given the responsible of **media coverage, the legal issues, conflict**

² The ethnic community in Kenya is composed of: Kikuyu (21%), Luhya (14%), Luo (12%), Kalenjin (11%), Kamba (11%), Kisii (6%), Meru (5%), Mijikenda (4%) Republic of Kenya, 1989 Census. Donor Information Center of Elections in Kenya

³ There are 18, 367 polling stations and polling streams scattered all over Kenya. In some polling stations there are more than one polling streams in the polling station and stream/stations have a maximum of 1,000 voters.

management and resolution (national level election disputes) **and liaison** (with Electoral Commission of Kenya and other national stakeholders); **the faith based organisations** (Muslim, Christian and Hindu) were collectively responsible for **recruiting, training, coordinating and supervising observers deployment** across the country. It worth noting that this is the first time in the national history of Kenya that the three major religious in Kenya would work together, the national significance of this collaboration should not be underestimated in a country, which has often being on the receiving end of religious fundamentalist attacks.

This cooperation saw the level of electoral violence reduced significantly compared to 1992 & 1997 general elections which were held within the context of violence and conflict. The 2002 electoral violence and conflicts were more localised within constituencies and not ethnic in nature. It was more of violent conflicts resulting from fall-out from party nominations where candidates coming from same constituency but different parties, engaged in personality clashes.

Technical aspects of domestic observation

Generally the reports of the observer groups present at the last general election in Kenya describe the election as free, fair and demonstrating the determination and will of Kenyan's to choose who their leaders will be with great maturity and tolerance. For this to be possible, the rule of the game must be such that allow all political parties to organise and mobilise supporters across the country and have access to the ballot, the media and funding for political activities. Similarly, it also means that rule of fairness in determining voter's eligibility⁴ collectively agreed to by all political parties must be developed, procedures for identifying and certifying those eligible must be adopted, and methods for counting the vote must be agreed upon. That a system for internal election monitoring of the polls must be established by all political parties and put in place. The main areas in which local observation had practical and technical impact in Kenya involve election and registration rules, nomination and campaign process, election logistic, electoral disputes, monitoring and post-election transition.

Election Rules

K-DOP contributed to creating an environment in which all eligible voters and competing political were able to campaign and present their political agendas to the electorate. K-DOP was able to scrutinise the election rules to see whether they afford an atmosphere of open debate and widespread participation without intimidation. They evaluated the implementation of the rules, for example voter registration, prevention of fraud, and ballot secrecy, and declared it satisfactory. K-DOP expresses its confidence in the rules of the electoral process, thereby pronouncing the legitimacy of the enterprise.

⁴ In the context of Kenya's 2002 general election, an eligible voter is a voter with: 2002 voters card; national identity card or passport; their name appearing in the 2002 voters registration; and voters card is not embossed (S.M. Kivuitu, **Election Handbook for Political Parties and Candidate on Parliamentary and Civic Elections**. Nairobi: Friedrich Ebert Stiftung, 2001).

Election logistics

Holding three elections (i.e. the Presidential, Parliamentary and Civic elections⁵) require an enormous amount of resources and infrastructure from the Electoral Commission of Kenya (ECK), for example K-DOP observation on the election day indicate that the process was marred by minor logistical problems such as polling stations opening late, bad weather (heavy rain and floods), this further validates the Kenyans effort in laying a solid foundation for the 2002 elections.

Electoral Disputes

The role of K-DOP in conflict resolution is to further give legitimacy to the electoral process because its involvement in dispute cannot in any way seek to address the underlying causes of conflict which came to surface during the election period. If one or more of the parties are unwilling to accept the outcome of the election and choose the way of armed struggle, there is little the observation programme can do to prevent it. K-DOP acted as complaint investigator, fact finders, interveners, referees, and deterrents to conflict and manipulations in the election. They investigated cases of electoral fraud, intimidation and violence. In general, they found evidence of election related violence, misuse of state resources for political purpose, and voter bribery. Generally, K-DOP worked with the Electoral Commission of Kenya and with all political parties in producing agreements intended to eliminate campaign violence.

Monitoring the Electoral Process

The major activity carried out by election observation teams relates to overseeing the election as it unfolds. This is the time when observers put into implementation all that was learnt on how to observe an election. The observers evaluate whether election rules were implemented according to the electoral law with fear and favour. The observers evaluate whether parties, candidates and authorities (in this case the ECK) voters education have presented their message and the electorates understood what have being presented to them. The election day activities in many ways tend to be the major key indicator of legitimisation or delegitimation of an electoral process in general.

Voters Register

K-DOP raised the concern that in some constituencies, the names of voters missing from the register amounted to thousands. But the extent of its impact and potential bearing on the overall quality of the election process does not lay heavily on what the election represent for the citizens of Kenya – democracy as a preferred method of effective political change in Kenya's polity and a reflection of a democratic will.

⁵ The presidential election fielded four (4) candidates and the parliamentary election was thirty-seven (37) political parties fielding 1,032 candidates for the 210 parliamentary seats.

Media

K-DOP provided a systematic media monitoring coverage of the whole electoral process. The media monitoring reveal that the Kenya Broadcasting Corporation's (KBC) coverage of the political events consistently maintained a bias toward KANU in all election coverage. It was reported by K-DOP that 75% of the total airtime allocated to political news by KBC TV and 80% of the total airtime allocated to political news by KBC radio was given to KANU on the election day respectively. K-DOP media monitoring project included the identification of inflammatory press coverage, which reported that the little coverage given to other political parties by the State broadcasting agencies (KBC TV and Radio) were largely negative.

Voting

On the election day, most of the K-DOP poll watches arrived at the polling station at 05h15 and observed the whole voting and counting process, which proceeded in many instances into early hours of the morning. In general the voters turn out was reported to be just over 50% of the 10.5 million registered voters in which 4.83 million are women and 5.65 million are men. By comparison to other election on the continent, the voters turn out is quite low. According to an NGO study it was reported that 1.5 million dead voters are on the voters register but nobody really knows the exact figure. So the voters turn out need not be over emphasised, just to say that this would require further analysis. Although K-DOP observers encountered widely scattered voting problems, they evaluated the balloting process overall as without serious flaw such that it affected the outcome of the election.

Ballot Counting and Tallying

All K-DOP observers remained at the polling stations to watch the votes being counted and recorded. Each polling station proceeded immediately after the last voter cast the ballot in accordance with the electoral law regulation governing the election, to ascertain the validity of the votes cast and the winning of the elections in each polling station. The presiding officer with all the electoral clerks, party agents and K-DOP observers transported the ballot boxes to the constituency counting center for tallying, where the constituency result was tallied and result was announced in the presence of all witnesses which include K-DOP observers. The overall assessment of K-DOP in its role as giving legitimacy is evident in giving strong and unequivocal endorsement to the election process.

Conclusion

The elections were conducted in a highly commendable manner, and so far, no problems have been detected which might cast serious doubts on the process enabling the people of Kenya to demonstrate their will in choosing their leaders. The best evidence of this is obviously the victory of the opposition – NARC, which entertained doubts about the legitimacy of the process.