

Memorandum on Kenya elections

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SUBJECT: Third Brief on Kenya Elections

1. This update, prepared by Colin Bruce, the Country Director, covers reported violence and economic pressures; the related dispute over the presidential count; and on-going peace-making efforts. It draws on strictly confidential oral briefings and documents from senior UNDP officials who led donor engagement with the Electoral Commission of Kenya (ECK) and monitored the overall electoral process.

2. Violence is becoming more targeted and intense in some poor neighborhoods. Over 150 people are known to have died. In addition, just hours ago, an attack on a church in Eldoret, about 300 kilometers from Nairobi, killed about 40 women and children. As many as 20,000 people may have been displaced there as well. Calm has returned to other troubled spots but the situation remains tense, including in Nairobi where an opposition rally is planned for Thursday. Meanwhile, shortages of food and fuel are emerging, especially in low income areas, and pressures from the business community for an amicable solution are mounting. Bank staff are accounted for and remain 'shelter-in-place'.

2. Presidential Result. The considered view of the UN is that the ECK announcement of a Kibaki win is correct. Upon receiving the complaints from the opposition about irregularities last Saturday, the ECK spent 24 hours, in the presence of observers, reviewing each concern. On balance, they determined that there were more irregularities of consequence on the Odinga side than on the Kibaki side. For example, ECK considered reported turnout above 90 percent to be a red-flag for irregularities. Data available so far indicates that the highest reported turnout in a Kibaki stronghold was 90 percent; in the Odinga strongholds, there were 6 heavily populated areas with reported turnout of between 102 to 116 percent. Also, a draft EU report released today cites two constituencies (Kieni and Molo) in which Kibaki's margin was inflated but does not say whether that invalidates the overall results. The reader is left to determine that the inflation could not have been higher than 48,000 votes against the ECK-declared margin of victory of 230,000. (Reports from the Commonwealth and domestic observers are expected by next week).

3. Communication and Other Process Failures. The process of arriving at the result created a crisis of confidence due to missteps by (a) the ECK chair (who joked about possible rigging during a news conference), (b) the vocal EU observer who was not thorough and precise in analyzing information provided to him--information that is now being repeatedly quoted by the world media, and (c) the lack of preparation by Kibaki's party in dealing with a highly media-savvy opposition. For example, neither the ECK nor

Kibaki's party were effective in communicating that in Nyanza province (the home of Odinga's ethnic group), they were unable to field 'agents' as required following the reported murder of one agent from Kibaki's party. ECK and international media were not vigilant enough to establish that the person presented to the media as an ECK employee, who had witnessed rigging, was neither an ECK official nor a witness.

4. Moving forward. Several political and diplomatic initiatives are underway to try to restore calm. Central to these efforts is persuading Kibaki and Odinga to agree on a credible way forward, and to announce it together. One option being explored is getting them to agree to a recount which, by law, has to be done through a petition to Kenya's High Court. Eminent persons from abroad would monitor this recount. Meanwhile, Kibaki would proceed to form a Cabinet, possibly with some participation by Odinga supporters. It is unclear what would happen if the exercise arrived at a different result from the ECK decision. The gamble is that this would not happen and that even if it did, both sides would have a face-saving way to accept a change in course vis-a-vis their supporters.

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