



By Ken Flottman



About 10 years ago, I was preparing to move with my family to Nairobi from the United States just as Kenya was well into the 2007 election campaign. Although I was taking up a temporary job in “democracy assistance” as the resident director for East Africa of the non-governmental International Republican Institute, I was told to expect limited duties specific to the upcoming election.

My job was to step in to manage the office and supervise a small set of ongoing programmes, primarily one involving the training of women and youth in skills to run for office. We were also wrapping up a programme for the State Department training Muslim women regionally for increased political participation and had an agreement with the United States Agency for International Development (USAid) to conduct polling that had started with an exit poll for the 2005 referendum. We had done a survey that spring and would finish the programme with a survey early that fall, before the presidential race went into the home stretch.

I was on six months’ “public service leave” from my job in the States as a lawyer for a Fortune 50 American defence contractor and had previously been a volunteer trainer for IRI in Mongolia late in the Clinton administration and an election observer in Kyrgyzstan in 2005.

HITTING THE GROUND

My first week in Nairobi, I accompanied the consultant I was replacing to meet most of the presidential candidates to privately brief them on the results of our most recent opinion survey, our next to last in the programme. We also called on US ambassador Michael Ranneberger, who

expressed his desire to have IRI observe the upcoming election, which my predecessor had been telling me Ranneberger wanted. Any plans for such an observation mission had been disclaimed in Washington the week before, and I had trouble getting anyone back in the home office to take the idea seriously, as they confirmed with USAid that an observation mission was not in the works.

The paperwork with USAid for our public opinion and exit poll programme from 2005 unsurprisingly expressed the agency's concern about the negative trends that had materialised from the seemingly promising democratic breakthrough in the 2002 vote

In preparing for my democracy assistance posting, I had naturally read up on the stillbirth of the promised constitutional reform in the failed "Wako Draft" constitution following the 2002 "Rainbow Coalition" leading to the rise of the Orange Democratic Movement and Kibaki's purge of his erstwhile anti-Moi allies of the 2002 opposition. I also read up on the recent scandals. Of particular concern, of course, were the Anglo Leasing scams involving corruption in important national security acquisitions revealed by John Githongo who was subsequently blocked from carrying forward as "Anti-Corruption Czar" in the Kibaki administration and went into exile in London. Then there was the 2006 raid, only a year old then, on the *Standard* newspaper and the KTN television studios, which evoked the "bad old days" of single-party rule and a tightly controlled press and drew condemnation from the diplomatic community, including the US ambassador at the time, Mark Bellamy. The related "Armenian Brothers" circus made Kenya's security operations look profoundly compromised by criminals. The paperwork with USAid for our public opinion and exit poll programme from 2005 unsurprisingly expressed the agency's concern about the negative trends that had materialised from the seemingly promising democratic breakthrough in the 2002 vote in which opposition politicians united to support Kibaki against Moi's choice of his predecessor Kenyatta's unheralded son Uhuru.

THE AMBASSADOR WAS SURPRISINGLY UPBEAT

Given this background, I was surprised to find Ranneberger seemingly quite upbeat about the state of things under Kibaki as the campaign started to jell for the upcoming election. He made it clear that he wanted IRI to conduct a blue ribbon election observation mission to feature an "African success story."

My first public event at the embassy residence in the posh Muthaiga neighbourhood was the US Independence Day celebration. The guests of honour were internal security minister John Michuki, representing President Kibaki, and Uhuru Kenyatta, as "the leader of the official opposition." Michuki featured in my mind for taking credit for the infamous *Standard* raid on behalf of Kibaki, saying to the media house, "If you rattle a snake, you should expect to be bitten." "Retired" president Moi, although not in the official receiving line, planted himself front and centre to prominently greet guests. Michuki spoke about his recent "security co-operation" visit to the United States. Vice president Moody Awori was also introduced, but Michuki rather than Awori represented Kibaki.

So the diplomatic tenor had changed for some reason, at least in the approach of the ambassador, who had arrived in mid-2006, although I was perhaps slower than I should have been in fully appreciating the difficulties this would entail for me as an NGO worker engaged in democracy assistance, especially faced with an assertive ambassador who did not formally control our USAid agreement out of Washington, which at the time still involved only the polling and was scheduled to wrap up with a survey in September.

PROCEEDING TOWARDS DISASTER

In August, our office had a distinguished visitor from our board of directors, the late ambassador Richard Williamson, an especially well liked senior figure within IRI. “Rich” took the occasion to visit our Kenya programme while waiting in Nairobi for his visa to Khartoum to travel on to Juba in Southern Sudan. President Bush was to announce his appointment soon as his new Special Envoy to Sudan and we used the time to take him to meet Raila and Kalonzo as the ODM and ODM-K leaders along with a minister or two, and called on ambassador Ranneberger. Ranneberger again said that he wanted IRI to observe the election. Based on this, Rich was persuaded that we would be doing an observation and afterwards we proceeded to discuss who should be recruited as lead delegate. Rich and my boss who had come out from Washington with him arrived at the idea of Lloyd Pierson, a former IRI Africa director who had been the immediate past USAid assistant administrator for Africa. When I pointed out that I recalled seeing a favourable quote by Pierson in one of Raila’s campaign brochures, that idea was nixed. Neither of them had other specific suggestions at the time.

By October the surveys were showing what I sensed to be the conditions ‘on the ground’ — the opposition under the Orange Democratic Movement had put together in its six-member Pentagon’ a broad enough multi-ethnic coalition, building upon the momentum from the unrequited reformist sentiments from 2002, to have a plurality in a divided electorate

Following up afterwards with the USAid Mission, they now said they would “move heaven and earth” to meet the ambassador’s wish to fund an election observation mission. Likewise, USAid wanted to extend our polling programme — which started with the exit poll for the 2005 Constitutional Referendum — with an exit poll for the 2007 election. Although I knew that the ambassador was expressing confidence in “an African success story,” expecting a “free and fair” election, and expecting Kibaki to win, USAid told me that the intent of the exit poll, as with the one we had done in 2002, and on this contract in 2005, was among other things to deter election fraud and this was confirmed in our amended agreement.

To cut a long story short, by October the surveys were showing what I sensed to be the conditions “on the ground” — the opposition under the Orange Democratic Movement in the form now of the ODM Party had put together in its six-member “Pentagon” a broad enough multi-ethnic coalition, building upon the momentum from the unrequited reformist sentiments from 2002 and the successful blocking of the insufficient Wako Draft, to have a plurality in a divided electorate. Kibaki was very slow to assent to the start of his re-election campaign and conveyed a vibe that it was beneath him to do such “retail politics.” Formally, Kibaki was the Member of Parliament for Othaya from the Democratic Party, his vehicle since Moi gave in to pressure from activists and politicians like Odinga to allow non-Kanu parties in 1992. Kibaki had not seemed to want to run as a DP candidate, nor was he willing ultimately to join NARC-Kenya, whose leaders considered themselves the rightful heirs to the 2002 NARC vehicle. The NARC party papers themselves were controlled by Charity Ngilu, a 1997 presidential candidate herself who departed to become the sixth member of the ODM Pentagon. Eventually, Kibaki gave the nod to a new hybrid formation as a re-election vehicle, the Party of National Unity, PNU, both a party through which Kibaki sought re-election to the Othaya seat, and a coalition of various parties associated with politicians in ethnic groups — in other words, a gambit to match up and compete with the regional/ethnic Pentagon.

According to a report published by the US Congressional Research Service in February 2008, during the post-election crisis, by the early fall of 2007, Kibaki’s key aides were admitting to their analyst

that Kibaki was not going to win the vote. This was supported by the surveys showing a persistent opposition lead. Unlike today, the election then retained the “first past the post” system that had allowed Moi to claim re-election with 40% or less of the vote, officially, in 1992 and 1997. Odinga was consistently polling well shy of a majority but ahead of Moi’s 1992 and 1997 numbers, with Kibaki trailing by a few points. As the election date closed in, the race tightened a bit, but the scenario did not reverse, and then ODM opened up a bit more of a lead. Although at the last minute the Gallup organisation of the US came in and did a late poll showing Kibaki trailing by only two points in the national vote - this was trumpeted by Ranneberger as showing the race as “too close to call” - the firms regularly polling the race continued to show Kibaki trailing beyond the margin of error. This included both the reputable Steadman and Strategic pollsters that had had a long relationship with the USAid IRI programme dating back to its inception in the 1990s, including the exit polls from 2002, 2005 and again for 2007.

According to a report published by the US Congressional Research Service in February 2008, during the post-election crisis, by the early fall of 2007, Kibaki’s key aides were admitting to their analyst that Kibaki was not going to win the vote

POLL OBSERVATION ON A SHOESTRING

When we got the agreement from USAid for the election observation, funded at a shoestring amount at the end of the fiscal year, USAid had included descriptions by prior job description of various individuals that the ambassador had mentioned previously that he wanted to have invited. These IRI ignored in preparing for our independent observation as an NGO subject to an international code of conduct for independent election observation. As USAid’s right to “substantial participation” in return for their funding, the agreement stipulated its approval of IRI’s “lead delegate/s,” and it repeated the ambassador’s desire for former assistant secretaries of state Chester Crocker and Connie Newman. Ranneberger had worked under Crocker on Angola issues during the Cold War and Newman had served briefly in that role in the first George W. Bush administration, during which time Ranneberger had been her deputy. IRI disagreed with USAid’s right to approval of this appointment as a violation of our independence but did invite Crocker and Newman. Crocker was unavailable but Newman, also an IRI board member, accepted. IRI also invited former ambassadors to Kenya Johnnie Carson and Mark Bellamy. Ranneberger in a call to me well ahead of the election had said that Carson “would not be a good idea,” and that Bellamy should not be included as he was “considered to be anti-government.”

Carson, who was at the time serving as the Africa director for the Office of the Director of National Intelligence had to decline, whereas Bellamy was scheduled to participate. On Thursday, December 13, 2007, two weeks before the election, I got a call from USAid and was asked to fax our final delegation list — due to be released from IRI in Washington that day - to a number for the ambassador. After sending the fax, I was driving to lunch with my wife and a friend, the spouse of another US NGO worker who had been a Carter Centre election observer in another recent African election and had volunteered to help. I received a call from the ambassador who loudly chewed me out to the point that I had to pull over and step out on the roadside. Ranneberger was incensed that we had Bellamy on the list, and said that he was “laying down a marker” that this was not to happen. He said he did not want to hear that it was a decision from my Washington office as he was holding me “personally responsible as the person on the ground.” If we did not drop Bellamy he would pull the funding for the observation mission, adding that I should not doubt that he could do this.

Arriving in Dagoretti for lunch, I phoned Washington and my USAid contact in Nairobi. Long story short, IRI’s president at the time, who had been assistant secretary of state for democracy, human

rights and labour himself during the first G.W. Bush Administration, called then assistant secretary of state Jendayi Frazer to tell her, as he reported, “to get her ambassador under control,” then, on arriving in Thailand for Christmas and Burma meetings, called Ranneberger directly. As a result, I was told to expect that Ranneberger would ask to meet me, and that Bellamy was reluctantly dropped (with a cover story that IRI was not able to secure his plane ticket) but that I was to accept “no more BS” from the ambassador.

The next day, as I was leaving the polling firm, I got a call asking me to come meet the ambassador at his residence the next afternoon. So on Saturday afternoon, December 15, 2007, I drove to the embassy residence in Muthaiga. As it turned out, the purpose of the meeting was more substantive than just smoothing things over after the arm-twisting on Bellamy. I will explain a couple of salient points from this meeting that remain to me significant in trying to learn what happened with the election 12 days later.

I received a call from the ambassador who loudly chewed me out to the point that I had to pull over and step out on the roadside. Ranneberger was incensed that we had Bellamy on the observer mission list, and said that he was “laying down a marker” that this was not to happen. He said he did not want to hear that it was a decision from my Washington office

To start, Ranneberger elaborated on the importance of removing Bellamy from the delegation because of the notion that he was perceived as “anti-government,” obviously meaning anti the Kibaki administration. When Ranneberger had originally raised this objection as Bellamy earlier in the month, I had asked for input from our Kenyan programme staff who reported that this did not seem to be Bellamy’s general reputation in Kenya and IRI staff had checked this with State Department contacts in Washington and found no support for that view there either.

Ranneberger did let me know that he knew what Bellamy had been told about why he had been dropped from the delegation. In other words, he was letting me know, without taking responsibility for the situation himself, that he knew that “we” at IRI had lied to Bellamy. IRI was in a difficult situation not of our making on Bellamy; would we cancel the election observation (as the only international NGO scheduled to observe, this would raise lots of questions we could not answer) or let the ambassador interfere with our delegation? Regardless, once the directive from the top was given to lie to Bellamy about why he was off the list, IRI no longer had completely clean hands.

Another thing in particular stands out now from that meeting in light of what I later learned through Freedom of Information Act requests to the State Department after I returned to the US.

The ambassador told me that Saturday that “people are saying” that Raila Odinga, ahead in the polls for president as the vote was nearing, could lose his own Langata parliamentary constituency (which under the existing system would disqualify him from becoming president even if he got the most votes nationally). This was “out of the blue” for me because I certainly was not aware of anyone who thought that. Odinga’s PNU opponent Stanley Livando had made a big splash and spent substantial money when he first announced his candidacy, but he had not seemed to get obvious traction in the race. Naturally, I wondered who the “people” Ranneberger was referring to were. Ranneberger said that a Raila loss in Langata would be “explosive” and that he wanted to take Ms Newman with him to observe voting there on election day.

Ranneberger also went on to say that he wanted to take Ms Newman separately to meet with Kibaki’s State House advisor Stanley Murage on the day before the election, with no explanation

offered as to why. I reported all this by e-mail to Washington.

Ranneberger in Nairobi made no disclosure of what he had witnessed but encouraged Kenyans to accept the results announced by the ECK that Sunday and formal congratulations were issued from a State Department spokesman back in the US

Alarm bells went off at IRI's Washington headquarters when they received my e-mail. I noted Murage's reputation as "Kibaki's Karl Rove" (he was also referred to by a former diplomat as "Kibaki's bagman"). After people were back in the office that Monday, I was called by the top executives present in Washington (in the absence of the then-president in Thailand) in the wee hours of the morning my time. I was instructed that it was imperative that the private meeting with Murage - "absolutely improper" - not take place. Connie was to stay with the rest of the delegation and not go off separately with the ambassador on election day or otherwise. I was given the option to "pull the plug" on the observation mission based on the concerns about Ranneberger's approach. The ambassador, rather than either IRI or USAid, had initiated the observation mission in the first place, and IRI was heavily occupied with other, larger observations. Nonetheless, based on assurances that Ms Newman would be fully "on board" in our agreement, that she would steer clear of separate interaction with the ambassador and that the Murage meeting would not happen, and my belief that it would be an "incident" in its own right to cancel the observation, we agreed to go forward with precautions.

A SEPARATE LAST-MINUTE POLL OF THE LANGATA PARLIAMENTARY RACE

I got the idea of commissioning a separate last-minute poll of the Langata parliamentary race. I thought that the notion that Livondo would beat Odinga in Langata seemed farfetched, but objective data from before the vote could prove important. I also made sure that we scheduled an "oversample" for Langata for the national exit poll so that we would have a statistically valid measure of the actual election day results in the parliamentary race.

On to the Freedom of Information releases: On Tuesday, December 18, a Ranneberger cable went to the Secretary of State entitled "Kenya Elections: State of Play on Election." This cable says nothing about the "explosive" Langata parliamentary race issue that Ranneberger had raised with me on Saturday, three days earlier. It concludes: "Given the closeness of the election contest, the perceived legitimacy of the election outcome could determine whether the losing side accepts the results with minimal disturbances. Our staff's commendable response to the call for volunteers over the Christmas holiday allows us to deploy teams to all sections of the country, providing a representative view of the vote as a whole. In addition, our decision to host the joint observation control room will provide much greater access to real-time information; allowing a more comprehensive analysis of the election process."

Next, we have a cable from Christmas Eve, December 24, three days before the election. First thing that morning, the IRI observation delegates were briefed on the election by a top Ranneberger aide. I told him then that we had commissioned the separate Langata poll. He said that the ambassador would be very interested, and I agreed to bring results with me to the embassy residence that evening when the ambassador hosted a reception for the delegation. The results showed Odinga winning by more than two-to-one.

In this cable from the day he learned about our Langata poll, unlike the one on December 18, Ranneberger added a discussion of the Langata race:

"11. We have credible reports that some within the Kibaki camp could be trying to orchestrate a

defeat of Odinga in his constituency of Langata, which includes the huge slum of Kibera. This could involve some combination of causing disorder in order to disenfranchise some of his supporters and/or bringing in double-registered Kikuyu supporters of the PNU's candidate from outside. To be elected president, a candidate must fulfil three conditions: Have a plurality of the popular vote; have at least 25% in 5 of the 8 provinces; and be an elected Member of Parliament. Thus, defeat of Odinga in his constituency is a tempting silver bullet. The ambassador, as well as the UK and German ambassadors, will observe in the Langata constituency. If Odinga were to lose Langata, Kibaki would become president if he has the next highest vote total and 25% in 5 provinces (both candidates will likely meet the 25% rule).

12. The outside chance that widespread fraud in the election process could force us to call into question the result would be enormously damaging to US interests. We hold Kenya up as a democratic model not only for the continent, but for the developing world, and we have a vast partnership with this country on key issues ranging from efforts against HIV/Aids, to collaboration on Somalia and Sudan, to priority anti-terrorism activities.

...

14. As long as the electoral process is credible, the US-Kenya partnership will continue to grow and serve mutual interests regardless of who is elected. While Kibaki has a proven track record with us, Odinga is also a friend of the US . . .

15. It is likely that the winner will schedule a quick inauguration (consistent with past practice) to bless the result and, potentially, to forestall any serious challenge to the results. There is no credible mechanism to challenge the results, hence likely recourse to the streets if the result is questionable. The courts are both inefficient and corrupt. Pronouncements by the Chairman of the Electoral Commission and observers, particularly from the US, will therefore have to be [sic] crucial in helping shape the judgement of the Kenyan people. With an 87% approval rating in Kenya, our statements are closely watched and respected. I feel that we are well-prepared to meet this large responsibility and, in the process, to advance US interests." END

None of this material about a possible scheme to steal the election in Langata — or the notion that being "forced" to question the election result would be "enormously damaging to US interests" was mentioned in the briefing to the observation delegation or to me that Christmas Eve. Weeks after the election, the *Standard* newspaper ran a piece reporting that the original plan of the Kibaki camp had been to rig the Langata parliamentary race, but at the last minute a switch was made to change the votes at the central tally, supposedly on the basis of the strength of early returns for Odinga in Western and Rift Valley Provinces.

Ultimately, the election resulted in disaster, with at least 1,200 killed and half a million displaced in post-election violence after open rigging.

The Electoral Commission of Kenya had voted earlier in December, according to the subsequent report of the Kreigler Commission, not to use laptop computers that had been purchased as a key feature of the USAid-funded election assistance effort through the International Foundation for Electoral Systems. This decision was never explained and without the computers there was no way to quickly get verifiable results from the voting stations quickly to Nairobi.

The reality of the process was explained to me by a Member of Parliament during the post-election violence (PEV). He said that weeks before the election, when Kibaki had broken the crucial precedent first negotiated between the opposition and Moi back in 1997 to split the authority to appoint members of the Electoral Commission and unilaterally stacked the Commission with 19 of

his own choices in the 21 spots, the political players recognised that the process was going to be a no-holds-barred scramble for power and all bets were off on rules.

Also that January, during the PEV, a third-country diplomat explained to me privately that his country had learned that ECK returning officers in key locations had been paid “life changing” amounts of money to turn off their cellphones and drop out of contract with Nairobi so that the vote totals under their jurisdiction could be “marked up” in Nairobi to increase the president’s votes for re-election (consistent with what Ranneberger described in his then-classified January 2, 2008 cable as discussed below). This diplomat explained that his country had discovered the bribery too late, supposedly, to do anything about it. One possible reason for the alleged bribery to be discovered so late would be that the scheme to mark up the central tallies was a last minute substitute for the “credibly reported” Langata scheme Ranneberger mentioned in his Washington cable of December 24 and his meeting with me on December 15.

I expected that the president’s men would learn that IRI had also undertaken the special poll of the Langata Constituency. After the stacking of the ECK, another fateful turning point seems to me to have been the deployment by the president’s re-election team of the Administration Police in the days before the vote. This was something we all witnessed on live television thanks to broadcast reporting from KTN, but which the government denied. The ambassador’s aide confirmed to our observation delegation that this deployment was in fact a use of government security resources for the president’s re-election. Two of the deployed AP officers were killed by mobs and it seems that the atmosphere of a physical power struggle rather than a contest of democratic persuasion ratcheted up that much more at that point.

The fact is that I never have been able to identify a time when Kibaki actually said in public during my time “on the ground” that he was actually willing to entertain losing the election and giving up office in favour of the opposition. Eventually, shortly before the vote, his foreign minister, Moses Wetangula (now in the opposition) said that such a willingness was there, but he seemed to be conspicuously speaking to foreign diplomats rather than to ordinary Kenyans. To this day, no incumbent president in Kenya has ever been found by election officials to have lost a re-election bid.

DONOR VS. DONOR: THE UNITED STATES AND THE EUROPEANS SPLIT

On Wednesday, January 2, 2008, Ranneberger cabled Washington about witnessing with the head of the EU Election Observation Mission, Alexander Graf Lambsdorf, the changing of the vote tallies at the ECK headquarters over the weekend before, leading to the announcement of a Kibaki win on the evening of Sunday, December 30, 2007. The cable, which was declassified and released to me in redacted form through the Freedom of Information Act, reports “[M]uch can happen between the casting of votes and the final tabulation of ballots, and it did.”

The ECK’s partial review of the irregularities was also of questionable credibility, given that all of the commission members were appointed by the Kibaki government, and a number of them were suspected of being clearly biased and/or involved in doctoring at ECK headquarters. The Chairman of the ECK, Samuel Kivuitu, who was widely respected, was surrounded by staff of uncertain reliability and competence. It is worth noting that parliamentary results were not disputed because they were tabulated and announced at constituency tabulation centres, thus allowing no interference at ECK headquarters.

Presidential results by polling station never were published. The suppressed media reporting of the election results that disappeared with Michuki’s broadcast ban did not resurface except for the admission by the owner of the Citizen network in parliament in

December 2016 that the numbers had indicated an Odinga win

Kivuitu had only limited authority as head of the ECK. The ECK worked on a majority vote system. It is also important to note that the ECK was required by law to announce the results as received from the tabulation centres. Some obvious irregularities like reporting unrealistically high turnout or clearly altered results could be rejected. There was, however, only a rejection of the results in one constituency in which violence resulted in destroyed ballots. Other alleged irregularities, such as announcing results that ECK personnel personally inflated, should have been, could have been, but were not corrected. At one point Kivuitu told me that his concerns about the tabulation process were serious enough that "if it were up to me, I would not announce the results." In the end, he participated with other commissioners in an announcement late on December 30.

My team and I, as well as the head of the EU observer mission, were at the ECK vote tabulation centre throughout the tabulation process, and aggressively intervened with Kivuitu and other commissioners and staff to work for transparency. Our judgement is that the tabulation process was seriously flawed but, without having direct access to polling station numbers and doing a polling-station based recount, it is impossible to determine which candidate actually received the most votes. We had consistently predicted a close election. There were accusations of serious irregularities with respect to about 20% of the 210 constituencies. Some ECK insiders have alleged that the purpose of the delay in announcing the results in some of the constituencies was to determine the true count and then re-jig it in such a manner as to make up for gaps in the votes for Kibaki.

Announced results differed from results initially received by ECK from the tally centres. We have seen documents that illustrate this. In a close election, with Kibaki winning by about 230,000 votes, such irregularities may have been enough to make a difference.

Nonetheless, Ranneberger in Nairobi made no disclosure of what he had witnessed but encouraged Kenyans to accept the results announced by the ECK that Sunday and formal congratulations were issued from a State Department spokesman back in the US. Live broadcasting was shut down by order of Michuki. Eventually, I received on appeal of a FOI Act request originally from 2009 a copy of a document prepared by the State Department in Washington as "talking points" for the media on election day itself that "spins" an acceptance of an announcement of a Kibaki win with opposition objections.

European foreign ministries and diplomats in the meantime criticised what was obviously a highly irregular process with the suspect tallies and the hurried, secretive swearing-in of Kibaki. On Monday, the State Department changed position through its main spokesman in Washington, saying that "we are not congratulating anyone." On Tuesday, New Year's Day, the EU observation mission held a press conference and released its preliminary report, making clear that the election process had fallen [far short of key regional and international standards for democratic elections. Most significantly, they were marred by the lack of transparency in processing and tabulating presidential results, which raises concern about the accuracy of the final result in this election.](#) The EU observers and other Europeans called for remedial measures, including an immediate independent investigation and audit, with all results openly published. Ranneberger, however, instead of supporting the European calls for remedial action, was immediately promoting "power sharing" for Odinga with Kibaki instead.

The EU seemed to switch positions and come around to support the State Department's posture, abandoning remediation in favour of "power sharing." In that time of heightened sensitivity, trying to decipher what was happening, I tied this contemporaneously to reports that secretary of state

Condoleezza Rice called EU head diplomat Javier Solano on Thursday, January 3. My 2009 FOI Act request for documents related to that call identified that there was such a document but it was classified and remained too sensitive to release in any form at all. I appealed to no avail, and then last year submitted a request for Mandatory Declassification Review, which was also denied on the same grounds. My latest appeal of that decision has been pending for a few months now.

Many years later, a former senior diplomat was willing to tell me that the US policy was not to assist Kibaki over Raila, and that the US expected consistent relations going forward either way — which fits with the pre-election Nairobi to Washington cables I had got from FOI — but that the policy was to support whatever the ECK announced. A blunter take on what Ranneberger claimed in his cable of December 18, that it would somehow damage US interests if we were “forced” to question the ECK’s results. Assuming it to be true that the State Department was going to back whatever the ECK announced regardless, it was unlucky for me that no one told me about this before the election, as I surely would have taken the opportunity to cancel the IRI election observation mission since the State Department was not supporting the democracy assistance purposes of our agreement with USAid in working for free elections and observing independently in order to, among other things, oppose fraud.

EXIT POLL TOO HOT A POTATO

This policy would also suggest a reason that the exit poll that we conducted for USAid, which indicated a win for Odinga rather than Kibaki, was such a “hot potato” that it was held without public comment by IRI until a statement of January 15, responding to leaks of the results, that the poll was “likely invalid”, then on February 7, after it became a topic of inquiry in a US Senate hearing, definitely “invalid,” then released as valid in August, the day before the experts from the University of California, San Diego who had been heavily involved in the poll design and execution were to testify about it to the Kreigler Commission, having released it themselves in July after a six-month embargo imposed in their consulting contract with IRI.

Ranneberger insisted, though USAid, over my objection, on getting preliminary results of the exit poll on the afternoon of the voting before the polls closed, but clearly did not want the results released to the public as the other exit polls for USAid had been. Ranneberger answered questions from Kenyans and others in an online State Department Q&A on March 12, 2008 while the exit poll was still officially “invalid” and claimed that the poll had just been a “capacity building programme” and never intended to be released.

The USAid contract documents, which I of course had myself and of which I also obtained copies of through FOIA, show the contrary, and I also got a copy of the plan for public release by IRI of the first poll under that agreement, the exit poll from the 2005 Wako Draft referendum. If the State Department policy was to affirm whatever the ECK decided, the exit poll with a contradictory result was decidedly inconvenient.

I did not get anything about this from my FOIA requests, but in the fall of 2010, *Daily Nation* ran a story reporting that *Wikileaks* had published documents indicating that three members of the ECK itself had been slapped with “visa bans” by the United States in February 2008 on the basis of evidence that they had accepted bribes. Although Ranneberger had tweeted that former Attorney General Wako was subject to a visa ban at some point, nothing has ever been said publicly by the State Department to my knowledge about the ECK bribery issue.

At the end of the day, Kibaki stayed in office throughout for his second full term. On February 28, he signed his deal with Odinga for “power sharing,” against the active resistance of many on his side. From his unilateral Cabinet appointments of January 8, Kalonzo Musyoka stayed on as vice president

and Uhuru Kenyatta was promoted to deputy prime minister from local government minister when the Cabinet was expanded to include various opposition figures in the “Government of National Unity,” including Odinga as prime minister and his running mate Musalia Mudavadi as the other deputy prime minister. Of the two lions who faced off at the Kenyatta International Conference Centre as the drama over the late and missing election returns played out, Martha Karua stayed on for a time as justice minister before resigning, and agriculture minister William Ruto realigned politically after he came under fire over corruption allegations, as well as the ICC charges for the PEV that also stuck to Kenyatta.

THE POLITICIANS FORGIVE THEMSELVES

Collectively, Kenya’s leading politicians agreed to forgive themselves for the election fraud, and for the post-election murder and mayhem. The Kreigler Commission made recommendations for the future, but stayed off the crucial machinations at the ECK. Presidential results by polling station never were published. The suppressed media reporting of the election results that disappeared with Michuki’s broadcast ban did not resurface except for the admission of the owner of the Citizen network in parliament in December 2016 that the numbers had indicated an Odinga win. With much shuttle diplomacy and artful stonewalling of requests for phone, banking and property records — along with a lot of extraordinary misfortune and changes of heart by witnesses, the ICC was thwarted and no local tribunal ever convened to address the violence.

Early during my time in Kenya, Moi and Kibaki made up after their 2002 rift, with Kibaki appointing Moi as his envoy for the Sudan/Southern Sudan negotiations and Moi endorsing Kibaki’s re-election. For 2013, Kibaki completed what had been Moi’s original intention of handing off to Uhuru Kenyatta from 2002, with Ruto back in the fold after his brief time in opposition in 2007-08. Again, in 2013, USAid financed a results transmission system for the electoral commission through IFES. The procurement was botched and the system was not workable, but rather than being shelved from the outset it was set up and used initially to show up on a big screen at Bomas of Kenya some partial results indicating a large lead for Kenyatta before being shut down.

Weeks after the election, the Standard newspaper ran a piece reporting that the original plan of the Kibaki camp had been to rig the Langata parliamentary race, but at the last minute a switch was made to change the votes at the central tally

Without knowing the background of the botched procurement, “experts” told the media this slice of results indicated a “commanding lead” for the Uhuruto ticket from the onset.

The local civil society think tank AfriCOG (disclosure: I consulted briefly with AfriCOG on “observing the election observers”) petitioned the High Court to enjoin the electoral commission from announcing “final” results with the results transmission system shut down but was turned down on jurisdictional grounds, even though the High Court found the petition to raise significant questions. In the absence of the legally prescribed system to transmit the results to Nairobi, there was once again physical drama at the central headquarters, with observers excluded and no backup system in place to obtain verified results from each polling station — the only location where the paper ballots are counted.

Once again, observers were excluded as noted in the final reports of the Carter Centre and Election Observation Group (ELOG) funded by the donors as international and domestic observations respectively. The electoral commission announced final results six days after the vote, with a day to spare on the deadline, even without all the polling station results. Coincidentally, I am sure, the

Uhuruto ticket was determined to have .07% more votes than needed to avoid a runoff. The Supreme Court held a truncated hearing quickly following the election, consolidating the challenges to the electoral commission by AfriCOG and by the opposition. The court excluded much of the evidence submitted by the opposition and ignored much of that submitted by AfriCOG; it ordered a recount of votes from a sampling of boxes, but then went ahead and ruled, declining to upset the announced commission verdict without the limited recount being completed and in spite of the fact that significant discrepancies materialised.

Significantly, the Supreme Court found that the botched procurements of key technology, the results transmission system and voter registration and identification systems, smacked of fraud and ordered that they be investigated on that basis. A mere ruling by the Supreme Court was not enough to actually prompt any such investigation in Kenya, unfortunately. Months went by without publication of alleged election results and the electoral commission even refused to testify to parliament. What was eventually published later was incomplete. The electoral commission members were eventually swapped out once again, early this year, after the opposition was willing to expend a small number of lives to protest the inaction of the incumbent government in regard to issues that now included convictions in the UK for bribes paid to Kenyan election and education officials in the scandal known as "Chickengate." Like the old ECK, the members of the commission were bought out rather than fired, and of course there has been impunity for the bribery even though it was proven in court in the UK.

HERE WE GO AGAIN

So here we are again, in 2017, and I am waiting for answers to my questions as to who is paying for the acquisition of this year's version of the results transmission system, the so-called Kenya Integrated Election Management System, or KIEMS. I hope it is straightforward and transparent and handles the simple task of sending the results of the vote counting at the polling stations to Nairobi this time.

As an American, it is none of my business whom Kenyans vote for, but with all the investment of Kenyan blood, sweat and tears, and American and other donor funds, I will be disquieted until Kenyans are able to count on knowing how they have voted and be in a position to move their frozen politics forward with the kind of hope that existed before the debacle of 2007.

Published by the good folks at [The Elephant](#).

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

Follow us on [Twitter](#).