



By Dauti Kahura



The August 8, 2017 Kenyan presidential election, which was invalidated and nullified by the Supreme Court of Kenya on September 1, 2017, not only led to a flurry of hastily cobbled up contrite statements by international observer missions and some Western-based media houses, but also opened up a Pandora's box that critically questioned the role of international observer missions.

The election, which pitted for the second-time President Uhuru Muigai Kenyatta against Raila Amollo Odinga, was declared "null and void" by Chief Justice David Maraga on account of electronic and technological malpractices. A fresh election is slated for October 17, 2017.

Just two days after the voting had ended, the international observer missions that had come to monitor the elections had already written their preliminary reports certifying the general election as largely free, fair and peaceful. About 400 international observers had been deployed to watch the polls.

The missions included, among others, the African Union (AU), led by former South African President Thabo Mbeki, the Carter Center, whose chief election observer was John Kerry, the former US secretary of state who lost the 2004 US presidential election to George W. Bush, and the European Commission (EU), under the leadership of the Dutch politician Marietje Schaake.

While the EU observer mission, in its preliminary report, did cite problems to do with the lack of preparedness within the electoral process, the lack of applicable campaign finance legislation and unreliable transmission, it was only after the Supreme Court ruling that the EU and other missions realised that they had completely missed the mark - they were forced to concede that there were

massive electoral malpractices in the electronic transmission of the results.

Kerry, who had certified the elections as “free, fair and credible” despite “little aberrations here and there”, even felt the need to expiate his “sins of omission” in a *New York Times* op-ed article on September 14, 2017. The long and short of his opinion was to shift the blame to the media – local and international – by subtly accusing them of misquoting what the international observers had meant by “free, fair and credible elections.”

Schaake, the EU’s chief election observer was later quoted saying: “At times, expectations of us observers are greater than our mandate allows us to do. Kenya’s electoral process relied heavily on technology and observers did not have access to the backend of the system.”

Caught completely unaware by the Supreme Court judgement, Schaake beat a hasty retreat by justifying and mitigating the ineptitude of the international observers. So did the Carter Center, which said that it would reevaluate its observer mission to Kenya and find out from Kerry exactly what had transpired within the team that he had led.

Characteristically, the AU mission has kept a studious silence: It has not said anything about the nullification of the presidential election, nor has it explained the rationale behind the mission’s certification of the election as successful.

It used to be said that the precursor to the AU, the Organisation of African Unity (OAU), was a presidents’ club, where one of the unwritten rules was never to interfere with the “internal affairs” of a brother president’s country. It seems to me that that rule has never been done away with, even after the OAU was baptised the AU, insofar as election observation by the AU is concerned.

Removing “egg on the face”

After more soul-searching and hoping to erase “egg on the face”, on September 14, 2017 Schaake seemingly talked tough and called for “thorough investigations of alleged electoral offences in order to promote representations where warranted, including of IEBC [Independent Electoral and Boundaries Commission] staff. There have to date not been any investigations against senior public officers who have reportedly breached the law.”

Harping on the theme of accountability and thorough investigations, Schaake said that “fast, comprehensive and effective investigations are needed so that there is individual accountability for actions taken.” Seemingly striking an impartial balance, she mildly criticised both the Jubilee and Nasa coalitions for their “apparent insubordination” of the IEBC and the Judiciary after the Supreme Court ruling. “Since the elections, Nasa and Jubilee have at times been undermining the IEBC and the Judiciary respectively.”

After the Supreme Court judgement, the *New York Times* was forced to reconsider its earlier position. An editorial published on September 3, 2017 stated: “The ruling was a rebuke to international monitors and diplomats – and this page – who were too quick to dismiss charges of irregularities, largely out of relief that the August 8 voting had been mainly peaceful and in the hope that disappointment with the results would not lead to the sort of violence that had erupted after the disputed 2007 election, in which hundreds of people were killed.”

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“Multiple media reports suggested inaccurately that we and other international observers had declared the election free and fair,” wrote Kerry. “Although our observers had noted isolated instances of procedural irregularities in voting and counting, these did not appear to affect the integrity of those processes which had functioned smoothly.”

Kerry, like every politician, had no qualms about speaking from both sides of his mouth. He shifted blame and made sure he was not “caught with his pants down”. So he unabashedly wrote, “The court ruling didn’t contradict the reports of the Carter Center, whose team we led, or those of other observer missions, including the European Union and the African Union, whose findings were broadly similar.”

Not to be left out during confession time was the United States embassy in Nairobi. US ambassador Robert F. Godec and the heads of other diplomatic missions issued a statement on September 7, 2017 clarifying their unconsidered judgement on the August 8, 2017 elections. “The court’s decision was a strong call to everyone, including the international community, to reflect on how to make each election better than the last,” said Godec. “As partners, we are doing so and we are ready to assist again.” Sounding somewhat apologetic, Godec, on behalf of other Western countries’ diplomats accredited to Nairobi, hoped to justify their hasty verdict on the election by saying, “Some of our missions have been the subject of fake stories and false attacks in this election period.”

Godec made the point that “our electoral assistance was requested by the government of Kenya and conformed at all times with the Kenyan law.” The US ambassador issued the statement on behalf of 12 diplomatic missions: Australia, Canada, Denmark, Finland, France, Germany, Norway, Sweden, Switzerland, the Netherlands, the United Kingdom, and the United States.

The *New York Times*, one of the most influential newspapers in the world, equally reconsidered its earlier endorsement of Uhuru Kenyatta as the winner of the election after the Supreme Court ordered a fresh presidential poll. In an editorial praising the 8 August election, the *New York Times* had stated: “Raila Odinga, a perennial loser, began crying foul long before the election commission declared that President Uhuru Kenyatta was elected with 54 percent of the vote to Mr. Odinga’s 45. International monitors from the African Union, the United States and Europe said they witnessed no foul play; former United States secretary of state John Kerry, co-leader of the Carter Center’s mission of election observers, praised Kenya’s election commission for its transparency and diligence.”

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Journalist Sarah Jerving, writing on September 8, 2017 for Devex.Com argued, “The perceived mismatch between the court ruling and international observers’ initial observations has sparked a debate about how such missions operate and what role they

play in codifying elections. In Kenya, that discussion is complicated by a history of election violence linked to irregularities.”

The newspaper, realising the folly of its earlier hasty editorial endorsing the electoral process, added, “The fears were real, but the rush to judgment overlooked, among other things, that the supervisor of a new electronic voting system, Christopher Chege Msando, had been murdered and apparently tortured days before the election.”

The *Financial Times*, like the *New York Times*, seized the moment to comment on the Supreme Court’s unprecedented judgement, proclaiming the ruling as “the first of its kind in Africa.” Moralising on African dictatorial regimes, the paper declared on September 3, 2017: “The many regimes across the continent who exploit incumbency to perpetuate their rule through patronage, oppression and manipulation of the vote have been put on notice. So too have those international election observers whose formulaic rubber stamping of the results has become increasingly insidious - notably in undermining their own credibility, but also spreading cynicism among the electorate.”

Revisiting the violence that visited Kenya after the bungled election of December 2007, the *Financial Times* called out the international election observers who seem to be more obsessed with “peace” and “stability” rather than accountability and credibility. “Since 2007, when Kenya went to the brink of civil war in the wake of polls marred by fraud, there has been a tendency among such observers to brush aside all manner of irregularities in the interest of preserving peace.”

Amidst the international election observers “falling over each other” to quickly correct the impression that they had declared the August 8, 2017 elections as credible, one local observer organisation has stood its ground - insisting that the general election was “free and fair”, the Supreme Court’s ruling notwithstanding. The Elections Observation Group (ELOG) has maintained that Uhuru Kenyatta won the election fair and square. On September 4, 2017, Regina Opondo, the chairperson of ELOG’s steering committee (which includes Bishop Alfred Rotich of the Catholic Church) reiterated that Uhuru had won the presidential vote even though Supreme Court had found the process wanting. She said that the observer mission had deployed about 1,700 monitors and more than 5,000 (stationary) observers whose major responsibility was to focus on the results transmission. Her point of departure was that different observer missions had different methodologies which they used to ascertain whether the election had been conducted properly or not.

Journalist Sarah Jerving, writing on September 8, 2017 for [Devex.Com](https://www.devex.com), argued, “The perceived mismatch between the court ruling and international observers’ initial observations has sparked a debate about how such missions operate and what role they play in codifying elections. In Kenya, that discussion is complicated by a history of election violence linked to irregularities.” She particularly noted, “Clashes erupted after international observers highlighted irregularities in the 2007 elections, leaving more than 1,300 people dead and 600,000 displaced. Yet, the question now is whether observers have swung too far in the other direction, holding the bar for election too low, examining the wrong components on the side of caution to avoid unrest.”

Jerving poses the question of “whether election monitoring needs a rethink worldwide, particularly as electoral processes digitise, adding that “international observers focused too heavily on the voting process, overlooking critical next steps such as the transmission of the results, which in Kenya’s case was done digitally and with little transparency.”

A short history of election observer missions in Kenya

Election observer missions first became a major feature in Kenyan elections in 1992 after the country returned to multiparty politics in 1991, when former President Daniel arap Moi reluctantly repealed section 2A of the old Lancaster House Constitution. Western countries, led by the United States, spearheaded the multiparty wave in Africa and were particularly keen to witness political change in Kenya.

When Moi called the elections on December 29, 1992, they instantly flew in about 200 international observers. These poll watchers were augmented by between 7,000 and 10,000 local monitors who organised themselves under the auspices of the National Election Monitoring Unit (NEMU). NEMU consisted of, among others, the International Federation of Women Lawyers (FIDA-Kenya), Professional Committee for Democratic Change (PCDC), the International Commission of Jurists (ICJ-Kenya), the National Ecumenical Civic Education Programme (NECEP), the National Council of Women of Kenya (NCWK) and the Kenya Human Rights Commission (KHRC).

With the prospect of facing a sustained serious opposition for the first time, President Moi's Kanu *ancien regime* provoked ethnic clashes in the vast Rift Valley Province, especially in the North Rift, where many migrant Kikuyus had lived for many years. These clashes, ostensibly instigated by Kalenjin Kanu party mandarins, led to the death of 1,500 Kenyans and the displacement of 300,000 others, many of whom were Kikuyus living in the Uasin Gishu and Trans Nzoia districts.

Nobert Braakhuis, a political scientist way back in 1997 would write that oftentimes election observation is usually confined to elections themselves and perhaps a few days just before elections. In his essay "*International Election Observation During the 1997 Kenya Elections*" published in *Out for the Count: The 1997 General Elections and the Prospects for Democracy in Kenya*, and edited by Marcel Rutten, Alamin Mazrui and Francois Grignon, Braakhuis noted that "election observation ignores the broader political context and long-term process of which elections form part."

The international observers accredited to monitor the 1992 general elections, according to Braakhuis, "came on the eve of the elections and once the election was over flew out the same day." These international monitors were largely drawn from the Commonwealth, the Washington-based International Republican Institute (IRI), Denmark, Egypt, Germany, Japan and Switzerland.

Out of the 7,000 polling stations, the international observers visited only a few stations, and because they came on the eve of polling day, they could not capture any of the irregularities that obviously biased the election results. NEMU, which was funded by Western donor agencies, including the US Agency for International Development (USAID), the National Democratic Institute (NDI) and the Royal Netherlands Embassy, may have captured many of these irregularities, but did not have the international gravitas to broadcast Moi's underhand tactics.

The then electoral malpractices included Moi's regime ordering the police to disrupt opposition rallies and meetings, which made it extremely difficult for opposition politicians to register as candidates. Other malpractices included the use of state instruments of violence, namely, the police, the paramilitary General Service Unit (GSU) and even organised militia, to brutalise opposition figures.

Moi had a whole load of tricks up his sleeve, which ensured that the fledgling opposition was disorganised and scattered. He exclusively "zoned off" certain areas that he claimed were Kanu areas, and the opposition was refused access to these areas. In short, the opposition went to the 1992 general election on a very uneven field.

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Apart from these "tribal clashes", Moi's government also harassed the media so much that news organisations were afraid of reporting Kanu's political excesses. In the lead-up to the 1992 elections, there was only one national radio broadcasting station, the state-owned Kenya Broadcasting Corporation (KBC), which could not broadcast news about the opposition, let alone reports about the orchestrated killings of one ethnic community in the Rift Valley.

With all these disadvantages poised against a fragile and nascent opposition, "national and international observers, embassies and the like, were simply not prepared to oppose the salami tactics that increasingly reduced the chances of the opposition to win the elections by introducing uneven electoral conditions," wrote Braakhuis.

Many keen observers of the 1992 multiparty general election noted that the international observers had been to Kenya on "election tourism", suggesting that they were in the country to have a good time rather than to monitor an election. The "election tourism" tag also alluded to the fact that the various international observer missions' reports were done in haste and without collating the different missions' assessments.

Given the way that local and international observers had handled the elections - ignoring talk about the clashes and Moi's gagging of the press - "the international observers came in for serious criticism," said Braakhuis. The result of this "see no evil, hear no evil and speak no evil" attitude of the international observers was aptly captured by *Africa Confidential* magazine in 1993 when it wrote: "Neither the foreign nor the local observer groups had the capacity and resources to comprehensively investigate rigging allegations. Consequently, they reported the most blatant and easily verifiable irregularities."

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When the post-election evaluation was done, it was evident that the international observation had been an exercise in futility and that the observer missions had lost their credibility. The missions had totally failed to capture electoral malpractices. This fiasco put the Western world on the spotlight. So, by early 1997, during the second cycle of the multiparty elections, they were already thinking of crafting a new model.

The new model that the international observers envisaged was one that would allow for a comprehensive and in-depth observation of the electoral process that was not limited to a one-day affair. The new model would also enable the observers to stay in the country a while longer, gaining experience and long-term perspective. This would equally allow them to understand the political terrain, including identifying possible tricky manipulations of the electoral process.

Western countries, through their respective embassies, formed the Donor for Development and Democracy Group (DDDG) in 1997 (which was re-named the Democracy Development Group (DDG)

the following year). One of the first things DDDG did was to form the Election Observation Centre (EOC), whose members were drawn from diplomatic missions and international experts recommended by DDDG.

The DDDG consisted of 22 diplomatic missions with representation at the European Commission. They were: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, The Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom and the United States.

The EOC was composed of four coordinators - Dr Judith Geist, (USAID), Prof. Palle Svensson (Denmark - Aarhus University), Dr. David Throup (British Foreign Office) and Dr. Marcel Rutten (The Netherlands). Nonetheless, there was a caveat as to what precisely the EOU would engage in. The EOU was supposed to refrain from making public or press statements and from having any external contacts, except through its president. Canada was in charge of the presidency.

The EOU's mandate was basically divided into six clear-cut operations:

1. Registration of voters (which was conducted between May 19 and June 30, 1997)
2. Designation of candidates within the political parties' nominations (which took place between late November and early December, 1997)
3. Official nominations (presidential: December 2-3, councillors and parliamentary: December 8-9, 1997)
4. Campaign period
5. Election day, including vote counting (December 29)
6. Election aftermath

To be better prepared this time, DDDG began having its own meetings as early as May 1997. The move was certainly encouraged by the hastily convened Inter-Parties Parliamentary Group (IPPG) reforms, which somewhat hoped to level the playing field as the country geared towards the December elections. IPPG had been necessitated by the events of the Saba Saba Day (July 7, 1997) and Nane Nane Day (August 8, 1997), during which the police had unleashed unmitigated violence on opposition supporters. With the support of Western countries, they too had pressurised the Kanu government to implement minimalist reforms.

The local observer group for 1997 elections included the Institute for Education in Democracy (IED), Catholic, Justice and Peace Commission (CJPC) and the National Council of Churches of Kenya (NCCK). Together, they deployed about 27,000 poll watchers. This meant that there were at least two observers per polling station.

Two weeks prior to the election, the EOU got into top gear and distributed the Diplomatic Election Observers Field Guide - a self-prepared documentation containing guidelines for observers. Still, the ever cunning and unpredictable Moi jolted the EOU's preparedness by suddenly transferring the Electoral Commission of Kenya (ECK)'s chairman Justice Zacchaeus Chesoni to the High Court. This move alone caught the international observers unawares; they did not know what the move portended.

There were glaring irregularities during the 1997 elections that the international observers took note of. "The opening and closing hours of the polling stations varied erratically with voting extending in some places to more than 48 hours," wrote Braakhuis. "The counting process was equally erratic, sometimes taking a whole week." There were also many irregularities in the ballot distribution. All these irregularities seemingly happening at the same time confused the observers. In fact, many of the international observers left even before all the voting had been concluded.

The international observers had to deal with a crafty Kanu party machinery that intimidated its opponents using brutal force, stuffing ballot boxes, spoiling ballot papers, introducing unsealed ballot boxes, kidnapping returning officers and handling ballot papers improperly. Yet, with all these irregularities, “the election of Daniel arap Moi as president was accepted,” observed Braakhuis.

According to *Kenya's Hobbled Democracy Revisited: The 1997 General Elections in Retrospect and Prospect* by Arne Tostensen, Bard-Anders Andreassen and Kjetil Tronvoll, as far as election observation was concerned, the international element was smaller in 1997 than in 1992. “The international observers under the auspices of the Donors’ Democratic Development Group (DDDG) also assumed a more reticent attitude with respect to passing a judgement over the conduct of the election.”

“The technical limitations are exacerbated by political realities. Clearly, the idea that international observers are a neutral, independent force is a myth. In reality, they are every bit as subject to political pressure as the parties they observe.”

On the third cycle of multiparty elections that took place on December 27, 2002, the international observers would remark that “the 2002 elections mark(ed) an important step forward in the process of democratic development in Kenya.” In particular, the EU Election Observation Mission (EOM), which had been in the country from November 19, 2002 till January 17, 2003, stated that “the overall conduct of the elections constituted an example for other countries in the region, also because the electoral process resulted in the first transfer of power from one political group to another since independence.” The EU EOM waxed lyrical that the transfer of power from the Kanu regime to Mwai Kibaki’s government showed that Kenya had “truly become a multiparty democracy.”

The EU EOM also noted that “the level of violence and intimidation during the pre-election period was significantly below that predicted and below the level of the 1992 and 1997 elections.” In summary, the EU EOM said it was “impressed by the conduct of the 2002 elections.”

What exactly is the role of international observer missions?

What is it that gets an international observer team to get impressed about an election? And what exactly is the primary role of an election observer mission team?

In an article they wrote for *Foreign Policy* in April 2016, Gabrielle Lynch, Justus Willis and Nic Cheeseman argued that “international election observation missions – when small teams of foreign nationals are sent to watch over elections under the auspices of groups, such as the European Union, the African Union and the Carter Center – are intended to deter foul play and ensure free and fair polls. The trio noted that, “across Africa, international observers have frequently refused to give elections the evaluations they deserve for fear of offending incumbent governments and triggering political instability – and, also, it would seem because they apply lower standards on the continent.”

Are these the “lower standards” that the *Financial Times* alluded to as “the soft bigotry of low expectations” insofar as elections’ monitoring in Africa by international observers are concerned? The newspaper, in reference to Kerry’s praising of the IEBC beforehand for a “job well done”, said that the former US secretary of state “appeared guilty of the ‘soft bigotry of low expectations’, to borrow from a phrase coined by his own nemesis George W. Bush.”

“The challenges facing election monitors are both political and technical,” stated the *Foreign Policy* article. “The technical limitations are exacerbated by political realities. Clearly, the idea that

international observers are a neutral, independent force is a myth. In reality, they are every bit as subject to political pressure as the parties they observe.” Citing Kenya specifically, the three writers of the article, who have been observing the political situation in the country for some time, noted that “in the 1990s, observers turned a blind eye to deeply flawed elections in Kenya because they were worried that speaking out would trigger civil war and regional instability.”

But it is Judith Kelly of Duke University in the United States who seems to have captured the true essence of international election observers: “[International] monitors are more likely to endorse elections in countries that are major foreign aid recipients. Kenya, one of the US’s closest allies on the [African] continent received more than \$500 million in USAID funding last year.”

As if to bolster Kelly’s argument, on September 18, 2017, the US government’s Bureau of African Affairs made it publicly clear that they were keenly monitoring the trajectory leading to the fresh presidential elections slated for October, 17, 2017. “We [the US government] are not going to take our eyes way from Kenya: Kenya matters. If our largest embassy is in Nairobi, Kenya, that means we have a stake in that country, and Africa has a stake, and this government is looking at where the trend will go after October 17,” said the Bureau’s principal deputy assistant secretary Donald Yamamoto.

This sentiment is echoed by Emma Gordon, a senior East African risk analyst based in London, who observes that “for several years, election observers’ main audience has been the international community rather than the population whose election they monitor.”

However, by looking the other way as electoral malpractices are perpetrated by various governments, the international election observers have become, “complicit in the attempts of a brutal authoritarian regime to hold onto power and [in the process] undermined their own reputation.”

The August election in Kenya was a classic case of how international election observers undermined their reputations and credibility by whitewashing or ignoring electoral malpractices in the name of stability and to protect their own national interests.

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