

## TECHNICAL NOTE ON VOTER REGISTRATION

### 1) The role of registration in the electoral process

Although the registration of voters has Constitutional status in Kenya (Section 43 of the Constitution) it is, in strict sense, an administrative process which only aims to facilitate voting - the essence of an electoral process. Before a person can vote, it is necessary to perform the following controls:

1. Verification of entitlement: To ensure that the person that appears at the polling station is entitled to vote in the election that is being held there;
2. Verification of identity: To ensure that the person that appears at the polling station is the person who s/he purports to be,
3. Verification that the person has not previously exercised his/her right to vote: to ensure that voters do not exercise their right to vote more than once,

It is possible to conduct an election in which all three aspects above are taken care at the time of voting. Such was the case, for instance, of the 1994 elections in South Africa. However, the verification of entitlement is a time consuming exercise, as it is necessary to verify citizenship, age, the non applicability of some of the restrictions that are placed on the right to vote (e.g. being of sound mind, not having being condemned of certain types of crime, etc.), as well as the entitlement to vote in the specific constituency/ward where her/his vote will have effect. In the case of Kenya, the qualifications specified for entitlement are somewhat complex, particularly so in the case of local elections.

It is for this reason that the verification of entitlement is usually done in advance. The Register of Voters is essentially a list of persons whose entitlement has already been verified. If such a list exists, entitlement will be quickly verified at the polling station by checking if the name of the prospective voter is included in the list.

It should also be mentioned that the registration of voters usually contributes to all three activities mentioned in the initial paragraph. In some cases, the electoral management body (EMB) issues a document that can be used both for the verification of entitlement and identity (voters' card becoming, in many of those cases, a document of identity that might be used in other aspects of daily life). In some cases, the EMB does not deliver a document but includes in the list of entitled voters sent to the polling station information that enable the polling officers to verify the identity of the voter (e.g. the inclusion of photographs or signatures in such list). The registration process is also frequently used in relation to the third type of verification (avoidance of multiple voting). This is done by crossing the name of a person who has voted in the list of voters sent to the polling station, or by placing a mark in the voters' card, or both. If the EMB and other relevant stakeholders are reasonably convinced that the name of a voter appears only once in the register (for instance, if the EMB has established effective ways to prevent double registration, like the use of Automated Fingerprint Verification Systems - AFIS), such markings would suffice. If not, a customary practice is marking the cuticle of one finger with indelible ink.

Previous registration of voters has another important administrative function: it makes possible adequate logistic planning by the EMB. In the absence of registration, the EMB could only make rough estimates of the number of voters that would appear to vote in a polling station and would be forced to send a significant quantity of extra material in order to cover unexpected large turn-outs. Previous registration, if it links voters to specific polling stations, substantially helps the EMB in planning the distribution of electoral materials and the allocation of polling staff.

It is important to emphasize that the systems and procedures established by the electoral authority concerning registration should not introduce bias affecting specific groups, or place excessive burdens on the citizens willing to exercise their right to vote. The verification of the absence of bias in registration procedures is not strictly an administrative issue, but it is related to the free and fair character of the electoral process. It means that the procedures chosen will not favour certain regions (by making it easier to register there) or affect differentially certain groups. For instance, in a predominantly Muslim area the registration of women will be jeopardized if women

officers are not included in the polling team. Similarly, if the registration process has a significant direct or indirect cost for the applicant, it will introduce a significant bias against poor persons, who may not be able to afford such a cost.

## 2) Voters' registration in Kenya: Historical Evolution

Registration process for the 1992 elections: For the first multi-party elections in 1992, registration of voters was undertaken for a period of 31 days starting June 8, 1992 and was later extended through July 29 on account of a boycott by the opposition. There were at the time 188 constituencies and 5631 registration centres. The procedure was simple enough: voters would present themselves at a registration centre, fill a form and present the National ID card as a proof of identity. The Registration Officer would then enter the information on the voter in a "black book" (a lined exercise book divided into alphabetical sections). The name, sex and address of the registrant were then entered into the appropriate place according to the first letter of the applicant's surname. The number assigned to the elector was composed of four blocks: the first two or three letters denoted the district, the second block designated the registration unit, the third was the initial of the voter's surname, and the fourth was a serial consecutive number (1,2, ..., n). Voters were issued on the spot an elector's card, which included the voter's name, the number assigned to him by the ECK and the National ID card number. At the time it was made of pink card stock, and not laminated or otherwise protected. The "black book" information was then transcribed into stencils and mimeographed and the mimeographed lists were used in the polling stations. In 1992, 7,956,354 Kenyans (an estimated 76% of the VAP) registered. The average productivity of the registration teams was 27.7 registered voters per day per registration team. It should be mentioned that since procedures were manual, it was impossible at the time to eliminate multiple registration. Therefore, numbers above probably include some multiple registered voters.

Registration for the 1997 elections: For the 1997 election, the ECK decided to computerize the Register, using OMR forms to compile the information. The UNDP had made an assessment on computerization, but it was discarded as the Government did not provide the required counterpart funds. Another study was then commissioned by

the ECK to a local firm. In 1997, there were 12,500 Registration Centres, twice as many as in 1992. Registration was to be conducted for 35 days starting on May 19, 1997 but later was extended for an additional eight days. The total number of registered voters was 8,967,569 (of which 8,013,814 during the initial 35 days –an average productivity of 18.3 registered voters per day per registration team). Of them, 47.9% were women and 52.1% men. Shortly before the elections, the government had decided to replace the national ID cards with a new version and, after some debate, the ECK allowed the use of either old or new National ID cards for registration. The computerization of the registration process allowed the ECK to check double registration, and 61,696 double and multiple registrations were detected and eliminated. The registration was a full exercise, involving the whole population.

The old electoral card was replaced with a new version, still in use. It is a document with limited security elements, laminated in cold at the issuing station. It cannot be used for identification purposes, as it does not include a photograph. It includes a thumb print, but this is not very useful for verification of identity on polling day. The information contained in the document are the elector's full name, her/his number of ID card, the elector's number, the constituency at which s/he is entitled to vote, the name of the place of registration (which coincided with a polling centre) and a control number.

In order to provide back-up systems, the ECK continued to use the black books with its manual entries. Apparently, in most cases the registration officer would fill the form B as well as the OMR form at the registration centre, and add the information to the black book later at her/his office.

Registration process for the 2002 elections: In June 2002, changes were introduced to the National Assembly and Presidential Elections Act to provide, among others, for the continuous registration of voters. This meant the introduction of two important changes. First, it was not anymore necessary to discard the old register and built a new one for each election. The register used for one election could be kept for the next, and only modifications resulting from the incorporation of new citizens, the elimination of deceased voters, changes in address, etc. should be incorporated. Therefore, the Register used in 2002 was based in the 1997 register, updated through registration

drives conducted in 2000 and 2001. The register was further updated through a registration drive conducted between 4<sup>th</sup> February and 19<sup>th</sup> March 2002 and a supplementary effort conducted for 14 days following 26<sup>th</sup> August. There were 1,3 million new entries: 1,040,155 new names were added to the register and 195,716 transfers were made. 53,476 cases of deceased persons (approximately 0.5% of the total number in the Register of Voters) were detected and moved to the register of deceased persons. They were later reinstated in the voter register due to complaints from the political parties on the accuracy of those cases and thus became a part of the 2002 National Register. At that time, ECK found 266,000 cases of double and multiple registrations countrywide, which were excluded from the voters' lists.

In the Register used in the 2002 elections there were 4,985,905 female (47.7%) and 5,827,111 male (52.3%) voters. The percentage of registered women was particularly low in Nairobi province: only 307,851 registered voters (34.8%) were female.

The age distribution of registered in 2002 was as follows:

Age	18-25	26-30	31-35	36-40	41-45	46-50	51-55	56-60	60 +	???
Percent	13%	17%	13%	11%	11%	8%	7%	5%	12%	3%

As it can be seen, the percentage in the range 60+ is somewhat high for a country of the characteristics of Kenya. This might indicate that a number of deceased voters were still included in the Voter Register. According to the EU 2002 Election Observation Report: "...the ECK does not systematically expunge the details of deceased persons from the Voter register and the Registrar of Persons does not have a structured method for removing deceased persons from the register and relies solely on the records from the Registrar of Births and Deaths."

In the 2002 elections, in the event that a voters' name did not appear in the computerized register, the polling officers could not refer to the "black books" (the original record of the registration), and could not allow the voter to vote even if his or her name appeared there, but not in the list provided to the station. This procedure, which

was later allowed in 2007, was specifically forbidden in 2002 because the political parties refused to accept it.

Registration for the 2005 referendum: The Register of Voters used for the 2005 referendum was the result of the successive annual updates that took place in 2003, 2004 and 2005. The total number of voters registered for the referendum was 11,608,891. No special registration drives were conducted, other than the annual update corresponding to 2005.

Registration for the 2007 elections: The 2006 annual Registration Drive was conducted between August 15<sup>th</sup> and September 14<sup>th</sup> 2006 (with a period for inspections between October 16<sup>th</sup> and November 17<sup>th</sup>). A total of 920,197 voters were added to the Register. The first registration drive during 2007 took place between March 1<sup>st</sup> and March 30<sup>th</sup> 2007 reinforced by a second drive that took place between June 11<sup>th</sup> and July 31<sup>st</sup> 2007 (with 30 days inspection periods following each drive). The increase in the number of registered voters was of 1,767,212 voters in both drives, resulting in a total number of voters for the 2007 election of 14,296,180, representing 71% of the 19.8 million persons over 18 years of age who were issued national ID cards.

Overall, the variations in the number of registered voters between 1997 and 2007 were as follows:

Year	1997	2000	2001	2002	2003	2004	2005	2006	5/2007	11/2007
Number ('000s)	8,968	9,080	9,411	10,451	10,777	11,222	11,609	12,529	13,044	14,296
Percent	100	101.2	104.9	116.5	120.2	125.1	129.4	139.7	145.5	159.4

As it can be seen, the massive registration efforts of 2006 and 2007, which took place in an increased number of registration centres (a total of 20,655 centres) and for an unusually long period (67 days), produced good results. In 2006/7, the number of registered voters increased by 23.1%, to be compared with the 29.1% increase of the previous eight years or with the 15.1% increase verified in 2001/2. It should be added that the Government had for the first time acquired equipment which enabled it to produce National ID cards in large numbers, which facilitated the access to the National ID cards by many young Kenyans. However, the average productivity of the registration

teams was exceptionally low, only 1.1 registered voters per day per registration team (and just 0.8 in the first of the two periods).

By-elections: Although by-elections were held in April 2003 (Wajir West, Naivasha); July 2003 (Yatta); November 2003 (Saboti, Kajiado South); April 2004 (Kisumu Town West); December 2004 (Kisauni); March 2006 (Kasipul, Kabondo); July 2006 (Moyale, North Horr, Saku, Laisamis, Nakuru Town) and May 2007 (Magarini), no specific registration efforts took place before the by-elections, as the law forbids registration to take place from the moment in which a parliamentary seat is declared vacant. The ECK, however, would replace lost or deteriorated voters' card during that period.

Evolution of the regional structure of ECK: Up to 1998 the ECK had not a formal regional structure. It used "casual" part-time workers in the Districts, which were paid with what little ECK could save from other parts of the budget. They were lodged at other government offices, and perform mostly logistical duties.

Since then, the ECK has obtained approval and funding for setting up the District Electoral Offices (DEO). In 1998 funding was available for the District Electoral Coordinators as well as three very junior officers (Copy typist, Clerk and Support Staff). In 2002 funds were obtained for another officer at higher level – denominated Electoral Officer II – which allowed them to recruit university graduates. The District Electoral Coordinator (DEC) is usually someone with previous experience as Returning Officer or equivalent. The functions of the DEC are essentially logistical. During registration drives the District offices would recruit personnel, receive materials, distribute them, pay bills and salaries, etc. At present they function in offices that belong to the ECK or have been rented. In order to build their offices the ECK received the land from the Government and use whatever funds are left from the allocation received for the holding of general elections for that purpose. Not many of these offices have vehicles. In between annual registration drives the DEC is nominated as Registration Officer and the Electoral Officer II as Assistant Registration Officer for the constituencies within the district.

The initial expectations of the ECK, when continuous registration was approved, were to have at least one office per constituency. Alternatively, they could have managed with

the 71 offices they have now, if provided with vehicles, which would have allowed the officers to travel throughout their district registering voters. Another alternative would have been to use Government Officers, who are everywhere, on a part-time basis. The ECK would have accepted such a solution, but political parties did not, as there is a deep mistrust in the government administration.

The number of ECK electoral districts corresponds to the number of Administrative districts of a few years ago. As of today, there are 137 Administrative districts that do not coincide with the Electoral Districts. The ECK has decided not to expand the number of electoral offices until the institution is provided with funding as well as adequate maps of the new districts, which seem to be still missing.

### 3) Voters' registration in Kenya: legal framework

The Constitution of Kenya defines the entitlement to vote in a rather unusual way. According to Section 32 of the Constitution, a person is entitled to vote in a constituency if s/he registered in such constituency as a voter (with a few standard disqualifications). In Section 43, the constitution specifies in detail the qualifications for being registered as a voter as:

- (a) (being) a citizen of Kenya who has attained the age of eighteen years; and
- (b) (having been) ordinarily resident in Kenya either:-
  - (i) for a period of not less than one year immediately preceding that date, or
  - (ii) for a period of, or periods amounting in the aggregate to, not less than four years in the eight years immediately preceding that date; and
- (c) (having), for a period of, or periods amounting in the aggregate to, not less than five months in the twelve months immediately preceding that date, been ordinarily resident in the constituency in which he applies to be registered, or has for such a period of periods carried on business there, or has for such a period or periods been employed there or has for such a period or periods lawfully possessed land or residential buildings there.

Subsection (2) of Section 43 specifies a number of disqualifications frequently found in other legislations: (a) if, under any law in force in Kenya, he is adjudged or otherwise declared to be of unsound mind; (b) if he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under a law in force in Kenya; (c) if he is detained in lawful custody; or (d) if he is convicted of specified election offences. Subsection (5) establishes the appeal procedures.

According to Subsection (3) the determination of questions regarding qualifications will be prescribed by Parliament. Subsection (4) prescribes that where a person “is qualified to be registered in more than one place as a voter in elections to which this section applies, he shall be so registered only in the first of those places in which he applies to be so registered, and Parliament may provide for the punishment of a person who, being already registered in one place as a voter in the elections or having applied to be so registered there and not having had that application finally rejected, applies to be registered in another place as a voter.”

The National Assembly and Presidential Elections Act (as revised in 1998 and 2002) establishes that the Electoral Commission should prepare or cause to be prepared “constituency registers in respect of all constituencies” and a “principal register, which shall be a combination of the constituency register, and such other registers, for the time being in existence, as the Electoral Commission may direct.” Subsection 2 mandates the ECK to open the Registers for public scrutiny.

Section 4A enshrines the principle of continuous registration, by establishing that the registration of voters can be carried out at all times (with the exception of defined time periods before the date of the election). Multiple registration is forbidden and penalized in Section 5. Last, Sections 8 through 11 define the basic procedures for claims and objections. Section 34 of the Act empowers ECK to make regulations governing other matters such as appointment of Registration Officials.

The Local Government Act (Cap 256) at Section 53 empowers ECK to make rules on the requirement for registration of electors and for election as an elected councilor. Under this section, candidates for local government elections are required to be registered voters within the local authorities in which they wish to contest as councilors.

Section 55 of the Act provide for the preparation of the register of electors by ECK for each local authority. According to Section 56, only those persons appearing in the register are entitled to vote at a particular civic election. The Fifth Schedule of the Act describes the circumstances under which one may qualify or be disqualified for registering as a voter during Local Government Elections. To qualify as a voter in Local Authority (civic) elections one must meet the following conditions:

- (a) Be a Kenyan citizen at least 18 years and over;
- (b) Possesses any of the following qualifications:
  - (i) Be in the current valuation roll, assessment roll and area roll or the local authority for the area applied to be registered; or
  - (ii) Have paid for each of the last three years a rate or tax levied by the local authority for general purposes;
  - (iii) have resided in an area within the local authority for periods aggregating to not less than five years in the past seven years; or
  - (iv) be a spouse of any person falling within paragraphs (b), subparagraphs (i) through (iii).

It should be noted that the ECK does not apply these qualifications, as they are almost impossible to verify. Last, the Elections Offences Act (Cap 66) defines offences that might be committed during the registration of voter exercise include the following:

- Knowingly making false statement in connection with any application to be placed on any register of electors;
- Making, preparing or printing without due authority, a document or paper resembling or purporting to be a register of voter;
- Printing a document resembling an elector's card;
- Being in possession, without due authority of an elector's card bearing another person's name or where no name has been written on the card;
- Supplying an elector's card without authority to any person;

- Destroying, damaging, defacing or making alteration without authority an elector's card;
- Selling an elector's card to any person or purchasing any elector's card from any person;
- Abetting, aiding, counseling or procuring the commission of or attempting to commit any of the offences contained in the Elections Offences Act;
- Registering twice or more times as a voter in one constituency(s) and local authorities or applying to register as an elector simultaneously in different registration centers; etc

The National Assembly and Presidential Elections (Registration of Electors) Regulations, 2002, describes a registration process decentralized at the constituency level. The ECK shall appoint a registration officer for each constituency (although a registration officer can be appointed for more than one constituency). They will be supported by one or more assistant registration officers. Each registration officer shall prepare and maintain a register of electors for his constituency "in such form as the Electoral Commission may direct".

The role of the registration officers in between registration drives is essentially passive, as the initiative for additions or changes lies on the individual electors. New electors who express their desire to be included or existing electors who want to transfer to other constituency or to make changes in their particulars should present themselves in person at the Registration offices.

Registration Officers have a more active role in the elimination of deceased people from the Register. During registration drives there are District Registration Committees made up of the District Officers, Chiefs, Assistant Chiefs and the village elder headmens. DEC's would get information about deceased voters from burial permits (issued and compiled by Chiefs/Assistant Chiefs and mortuaries) in the District Register of Births and Deaths. During the annual registration drive, an elder per sub-location is appointed by the ECK to identified deceased persons. Chief/Assistant chiefs certify this list of deceased voters which is then forwarded to ECK HQs for deletion of deceased voters.

It should be mentioned that this depuration is fraught with difficulties and it is far from being considered adequate. In some areas there is some underreporting of deaths; in the past death certificates did not include ID numbers which created difficulties for ECK in deciding deletion, as errors could easily happen; the capture of data by the mortuaries frequently records particulars of next of kin collecting the body instead of those of the deceased, etc.

Part VI of the Regulations provides the legal foundation for what are usually known as “registration drives” where the Electoral Commission expands significantly during a short period the number of places where voters can register, as described in the section on the historical evolution of the Register. According to Section 29 of the Regulations, the Electoral Commission may direct that (a) the register of electors for every constituency be revised; or (b) the register of electors for one or more specified constituencies be revised. This is the procedure applied in the months previous to a general election, to facilitate access to registration by voters.

#### 4) Voters Registration in Kenya: a criticism of present practices

Before 1997, Kenya used to have what is called a “periodic” Register of Voters which is a voters list established for a specific electoral event. It was developed for one-time use and was not an ongoing list, to be updated or otherwise adjusted between elections. It was produced in the period immediately preceding the election, normally within a relatively short time frame. It was discarded after the election, as a new one will be compiled before the next electoral event.

The old system had several positive aspects: (1) There was no need for a large administrative apparatus throughout the country to maintain an ongoing list between elections; (2) there was no need to track changes in voters’ personal information (including changes of address) between elections - the currency of a periodic list being one of its main advantages; (3) the voter registration period was limited, with clearly identifiable beginning and end; and (4) the periodic list could be developed without using hi-tech computer hardware and software. However, it was a rather costly exercise, and it involved a significant cost spike. In order to register the entire

population, it was necessary to open a very large number of registration places (coinciding with the polling stations to be used later), and required a very large number of temporary staff.

When the ECK introduced computerization of the Register in 1997, it became possible to introduce the so-called “continuous” lists. This involved two significant changes. First, the lists used for a given election were not discarded, but were used as a building block for the lists to be used in future elections. Second, it was only necessary to incorporate new voters, eliminate those deceased or who had lost their right to vote, and introduce the changes in particulars of already registered voters, particularly changes of address. The concentrated cost of opening and operating a large number of registration centers during a short period of time was to be replaced by the more diffused cost of setting up a network of ECK offices and procedures that would capture and register the additions and changes. Therefore, there was (in theory) no need for making any special efforts before elections, as the lists were constantly updated. It should be noted, though, in most countries where continuous lists are being used (e.g. Canada) the EMBs do not open an extensive network of offices to do the adjustments, as the system draws data gathered by other civil agencies, such as motor vehicle and driver’s registration bureaus, tax departments, and housing authorities.

In Kenya, the ECK opted for opening and/or reinforcing a network of local offices. Although the Commission did not have enough funds to open an office in each constituency, it did open 71 offices at district level, each of them taking care of 2 to 4 constituencies. In each of these District Offices, there is a District Electoral Officer and an Electoral Officer II who, in between registration drives, would act as Registration and Assistant Registration Officer respectively, for the purpose of the continuous registration. However, the use of data from other agencies, which is an essential feature of a continuous Register, did never happened, with the exception of data drawn from the Register of Births and Deaths for the purpose of eliminating deceased form the Register.

Therefore, continuous registration, as implemented in Kenya, depended entirely on the voluntary appearance of applicants, whether for new inscriptions, or for changes of

addresses or particulars. It seems that the absence of effective incentives for people to register in-between elections was never taken into account. From the point of view of a prospective voter, registration is a time-consuming procedure with no intrinsic value. The voters' card, as it has no use as an identity document, becomes useful only in election time. Even if a citizen is highly motivated to vote, that motivation is not automatically transferred to the act of registration - very few voters fully understand the relation between registration and voting. Having 210 Constituency offices rather than 71 would have resulted in a marginal decrease in the time spent for registration and in the distance to be travelled but, in the absence of effective motivation, the improvement in the "continuous" registration of voters would probably have been entirely marginal. That the lack of motivation is the main problem rather than the number of registration places is suggested by other facts. All the ECK offices are located in urban centres, and there is a large number of people living within short distance of them. Even so, registration is very low. In Narok, there are 40,000 inhabitants in the city itself. That means that a little over 1,000 persons reach the age of eighteen each year. However, only 10 persons registered in the first seven months of the year.

It is only when voting approaches that the interest re-emerges, as it becomes clear the registration is a pre-condition for voting. It is then when most people will opt for registering. International experience strongly points in this direction. Pakistan used to have a network of local offices where people could go and register at any time – just like in Kenya. During periods in which there were no elections, an average of 400 persons registered, mostly for non-electoral reasons (the voters' card was requested for a limited number of activities). When elections were called, the number of people seeking registration jumped to around 200,000 a month. In Guatemala, which has an Electoral Office in each municipality, 72% of these offices received one registration request or less per week in non-electoral years.

There are stronger incentives for obtaining other documents. National ID cards, Drivers' licenses, inscriptions with the tax authorities, etc., are important for many reasons, and most people would obtain them as soon as required. The principle on which continuous registration is based is that when a citizen makes contact with one of these other

agencies the occasion is used to either incorporate that person to the Voter Registers or to update her/his particulars. Given the demand for these other documents, the coverage and currency of the Register will improve as a consequence of the sharing of information. In 2007, only 14.3 million people registered to vote, but 19.8 million had the national ID card, even if obtaining the ID card takes more time and effort than registering as a voter.

In a different category there are those countries where there is no national ID and the voters' card includes a photograph and incorporates integrity features. In those cases the voters' card is widely used for identification purposes. It is this second use of the voters' card, rather than civic fervor, what creates a strong motivation for registering. In Mexico, for instance, where there was no national ID document, the voters' card was demanded by the public on account of its use as an "identity" document rather than because of its being an "electoral" document.

In the case of Kenya, the introduction of continuous registration, perceived as a step forward in 2002, it has in practice created a system that combines the costs of both the periodic and the continuous systems of registration. It has resulted in a extended network of District offices whose main purpose, in non-election years, is registering voluntary applicants. But the ECK still conducts yearly registration drives that in magnitude and cost are similar to those conducted in the case of a periodic register. Registration numbers under the two systems clearly support this argument.

<b>REGISTRATION ACCORDING TO DIFFERENT APPROACHES</b>		
<b>Type and period of registration</b>	<b>Number registered</b>	<b>Percent</b>
Continuous during 2006	28,854	2.5 %
Drive Aug-Sep 2006	1,141,523	97.5%
Total registered voters 2006	1,170,377	100.0 %
Continuous during 2007	40,367	2.0%

Drive Aug-Sep 2007	1,972,455	98.0%
Total registered voters 2007	2,012,822	100.0%

Although there might be some overlapping in the data, the numbers clearly suggest that the impact of continuous registration (understood here as voluntary registration by voters at District Offices) is almost insignificant. The data is consistent with that included in the IED study: “Registration of Voters in 2007 – An Audit” which indicates that 2222 out of 2,318 respondents (95.6%) had registered during the registration drives at the polling stations. The argument is also confirmed by the continuous registration data for the period January - April 2008. During these four months, the ECK network captured 553 transactions: 129 new registrations, 110 transfers, 23 cases of persons missing in the registers, 275 deceased and 16 changes in particulars. It can be estimated that the number of “registration events” (persons reaching 18 years of age, transfers, deceased, etc.) in a four-month period should be around 300,000. This means that continuous registration capture 0.18 % of the “registration events” that probably took place during that period. The average productivity of the ECK network of offices was 0.1 transactions per office per day – in other words, one customer every two week per office. Of course, the already low motivation is even lower immediately after a general election, but the quoted figures are quite indicative of the overall inefficiency of the system.

The drives conducted in 2007 had a similar low productivity. During 2007 there were two registration drives: one throughout March 2007, and a second from June 11<sup>th</sup> to July 31<sup>th</sup>. The total number of registration centers was 20,655 and those centers were open to the public for a total of 79 days. Since the number of registered voters was 1,667,000, the average number of voters registered per registration center was one per day.

It should also be emphasized that the extensive deployment may have allowed registering ex-novo the entire population without any problem. The average number of voters to be registered per registration centre per day - if all the 14,296,000 persons

who were registered to vote for the 2007 elections attempted to do so during the 2007 registration drives - would have been 8.8 registered voters per registration centre per day. This is a modest productivity if compared with that of the full population registration undertaken in 1992 (27.7 registered voters per day per registration team) or that of 1997 (18.3 registered voters per day per registration team). In some other international experiences, the number of voters processed per day per center had been around 50.

It should also be pointed out that the cost of this duplicate system is staggering. The cost of the field offices, mostly devoted to Voter Registration in non-election years, was of 309 M KSh in 2006 and it is expected to reach 377.4 M KSh in 2008. The cost of the 2006 registration drive was 412.2 M KSh, the two registration drives that took place in 2007 required 2,179 M KSh and the allocation for voter registration for 2007/2008 is 596.6 M KSh.

We should now turn the attention to the degree in which the actual ECK practices in the conduct of registration ensure an adequate verification of entitlement that, after all, is the time consuming aspect of registration. As it was mentioned there, the verification of entitlement is a time consuming exercise, as it is necessary to verify citizenship, age, the non applicability of some of the restrictions that are placed on the right to vote (e.g. being of sound mind, not having being condemned of certain types of crime, etc.), as well as residence in constituency/ward where her/his vote will have effect.

But none of this is done by the ECK. The only documents requested for registration are the national ID card or a Kenyan passport. They only contain entitlement information concerning citizenship and age. There is no information concerning residence (or the other conditions that would allow incorporation to or exclusion from, the register) in the national ID, with the exception of the sub location. The "residence" aspects of entitlement are entirely bona fide. Both Form B (Application to Register as an Elector) and the OMR form include a declaration: "I, solemnly and sincerely declare that ... I am qualified to be, and not disqualified from being, registered as a voter under the law in respect of the class or classes of election for which I now apply for registration". The ECK does not require any additional proof, nor are the registration officers required to

make any specific questions regarding these aspects of the entitlement. It does not conduct ex-post-facto investigation, or any other form of verification. The number of objections concerning other people's registration made by individual voters or political parties is very low. The ECK Chairman, with his detailed and extended experience, could not recall more than five cases of prosecution for offences in this category in the more than 15 years he has been involved in electoral matters.

Another specific problem is that the requirement to present a national ID card for registering as a voter excludes from the right to vote to a non insignificant proportion of 18/19 years old persons. Although the Registrar of Persons has a limit of 90 days for delivering the National ID, the waiting period is frequently significantly longer.

It should be noted that neither the Constitution nor the Elections Act specify any required means by which a person proves his or her eligibility to register to vote. The only reference to the use of the National ID card appears in the Registration Regulations, which are appended as a supplement to the Elections Act. It is entirely reasonable to require some form of confirmation of citizenship in order to register to vote. Not to do so would leave any system open to challenge on the grounds of inaccuracy and potential fraud. Such a requirement, however, should be structured so as not to be overly restrictive and thereby disenfranchise large numbers of otherwise qualified persons. It would be therefore equally reasonable to allow the use of a number of forms of documentation to prove citizenship, like birth certificates or other legal documents, if they contain the pertinent information on citizenship. Although it can be argued that birth certificates are easily forged, they are, in most cases, the only document required to obtain a National ID card, with the exception of the case of border areas, where procedures are significantly more difficult for certain ethnic groups who live on both sides of the borders.

#### 5) Information collected during the country visits

Problems related to registration were mentioned in practically all meetings and, in most cases, revolved around the same basic issues. The problems seem to fold in a few basic categories:

1. Electoral malpractices: The most frequent complaints involved tampering with the Register, including cases of persons illegitimately expunged from the rolls on account of supposed double registration, missing names, and accusations of illegal addition of foreign nationals (Ethiopians, Somalis and Ugandans) to the Register of Voters. At least in one case, it was argued that there was discrimination against Muslims, who were asked for documents not required from persons of other religions. The elimination of persons whose family name began with O was similarly mentioned in several occasions.
2. The subsistence of dead voters and migrants in the Register was mentioned in several meetings.
3. In practically all meetings the plight of the youth in obtaining the national ID card was emphasized. In a few cases, the existence of bias in the processing of IDs was suggested.
4. In some parts of the country, nomadic populations have limited access to both the national ID card and voter registration, and the ECK was asked to adopt adequate practices to service these populations.

A number of suggestions to solve these problems were proposed:

1. That the national ID cards should be sufficient for voting.
2. That the ECK should implement a continuous process of registration. Since the ECK already has a system of continuous registration, even if rather inefficient, the frequency of this proposal indicates that there is a problem in informing the population on the fact that they can register in between registration drives if they so want.
3. That the ECK should be tougher in controlling the effective implementation of the registration rules and the behaviour of its employees.

## 6) Completeness, accuracy and currency of the Register of Voters;

Three criteria are used to evaluate the performance of a Register of Voters: coverage, currency and accuracy. They will be used below to evaluate the present situation of the Register of Voters in Kenya.

Coverage – sometimes referred to as comprehensiveness or inclusiveness - concerns the extent to which the voters list contains information on all eligible voters at the time of the election. Currency refers to the extent to which the information on a voters list is up-to-date on Election Day. In other words, have those who died been deleted from the list? Does the list contain the latest residential address, particularly for anyone who moved since the last election? Accuracy concerns the extent to which the information listed for registered voters is correct and free from error. Errors may happen, as information is initially gathered and recorded by Registration officers, and transferred to a voter registration database used for the extraction and printing of a voters list.

There are two usual ways to compile information concerning the coverage, currency and accuracy of a Register of Voters. A frequent approach (used by IED in their audits of the 2002 and 2007 electoral lists) is to use two types of samples. Through the so-called “list-to-people”, a sample of registered voters is chosen, and localized through the addresses normally included in most Registers of Voters. The individuals in the sample are then interviewed, to verify whether they are still alive, have not changed address, and whether the information on them included in the register is free from error. This analysis provides adequate information on the currency and accuracy of the Register of Voters. The complementary analysis is called “people-to-list” and it attempts to measure the coverage of the Register. Usually, a sample of Census segments is chosen, and all the households within them are visited to verify if all citizens of voting age in each household are registered to vote. IED, rather than using census segments, selected 30 homesteads around the sample of polling stations included in their sample. Usually, a number of questions concerning the reasons for non-registration are made, to be used in designing approaches that would result in future improvements of the registration process. This kind of analysis is conducted in some cases by the EMBs themselves or by observation groups.

Unfortunately, there are factors in Kenya that conspire against the full use of this approach. The main problem is that the ECK does not have few useful records of the residence of most persons included in the Register. In the case of rural constituencies, IED was able to locate a significant number of the people in their sample using local guides. However, the lack of information on residence makes it impossible to locate persons in the selected samples in urban areas. Therefore, IED studies were limited to rural constituencies, which introduce a bias in the analysis.

However, the information collected by IED, even if derived from a non-representative sample, provides indications concerning the accuracy of the Register. In a sample of slightly over 1900 cases, the study found that when comparing the information in the national ID with that in the voter's card and the Register of Voters, there were differences relating to the ID card number in 2.6% of the cases, in the voter's name in 7.2%; in the date of birth in 2.5% of the cases; and in the gender of the voter in 0.9% of the cases. When comparing information in the voter's cards with that in the Register of Voters, differences were found concerning the number of the voter's card in 2.1% of the cases, and concerning the Constituency name in 0.1% of the cases.

The other standard approach is to use demographic information, which provides rough but adequate measures of coverage and - partially - of currency (it is not possible to determine the currency of addresses using demographic tools). For instance, according to the Census of 1999, the proportion of women in the population was 51.4% while the proportion of women in the 2007 Register of Voters was only 47.1%. If women had registered at the same rate than men, the total number of registered voters would have been of 15,384,572, rather than the actual 14,296,180. In the hypothesis of identical levels of registration, the number of registered women would have been 7,907,670, rather than the 6,819,278 that effectively registered. This suggests that the magnitude of women under representation is well over a million (1,088,392) - a significant 7.6% of the total number of registered voters. Furthermore, the participation of women has been decreasing throughout the years. In 1997 the percentage of women in the Register was 47.9%; in 2002 it decreased to 47.7% and in 2007 was only 47.1%. Since

there are no external factors explaining this trend, the only answer lies in the inability of the ECK to conduct focused efforts to redress the gender balance in the Register.

Another interesting analysis is the comparison of the demographically estimated number of deceased persons of over 18 years of age, corrected by the percentage of registered voters to total population for a given year, and the number of deceased persons that were deleted from the Register of voters. The difference indicates the number of deceased persons that the EMB has been unable to detect and therefore remain included in the Register. According to the ECK, the number of deceased deleted from the Register between 1997 and 2007 was 513,148 persons. Central Bureau of Statistics estimates for the same period project the number of deceased persons aged 18 years and above at 1,733,413 persons. Even if the figures are corrected to reflect the fact that only a certain percentage of the Voting Age Population (VAP) is included in the Register, the discrepancy is significant.<sup>1</sup>

The distribution of the deleted deceased per province, if compared with the total number of registered persons per province, gives an idea of the capacity for capturing data in the different provinces.

PROVINCE	# of registered voters as of December 2007	# of deceased deleted 1997 through 2007	Deleted as a % of RV
Nairobi	1,275,445	2,758	0.29
Coast	1,178,537	34,755	2.95
North Eastern	315,756	3,307	1.05
Eastern	2,374,763	92,744	3.91
Central	2,186,936	73,447	3.36
Rift Valley	3,358,381	83,832	2.50
Western	1,564,682	80,334	5.13
Nyanza	2,041,680	141,971	6.95

<sup>1</sup> The information used in the paragraph originates in two submissions from the ECK.

National total	14,296,180	513,148	3.95
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Another type of analysis frequently conducted is shown in the figure below, which compares the age structure of the population at large with that of the Register of Voters. As it may be expected, the number of older persons in the Register exceeds that in the population at large, since it includes a number of deceased people. The excess is represented in the graph by zone A. On the other hand, young people are under registered, and the numbers of people in the 18-19 years range in the Register is usually below their proportion in the population at large, which is represented in the graph by zone B.

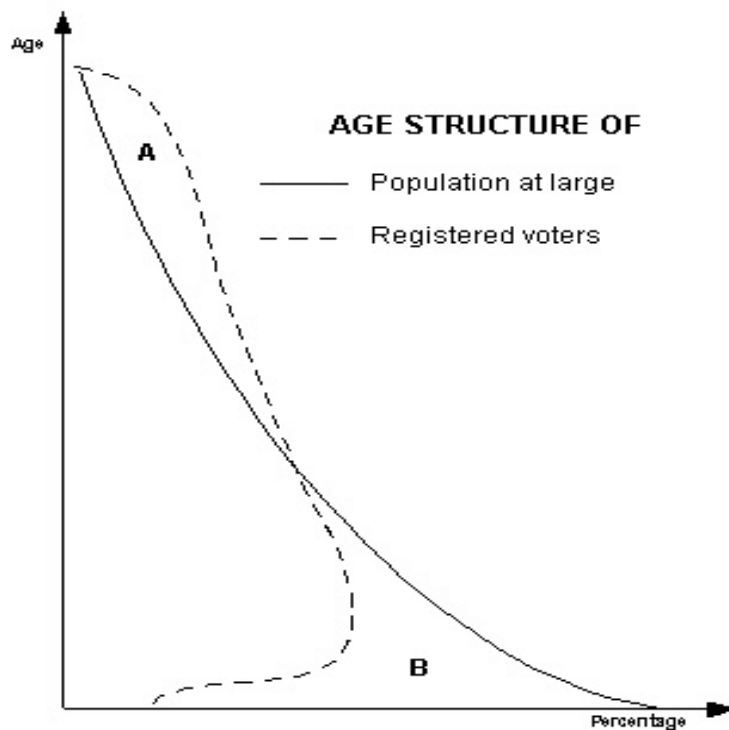


Figure 1 – Comparison of age structure of Register and Population at large

In the case of Kenya, the comparison of the age structure of the population at large and the age structure of the Registered of voters produces the results indicated in the table below:

Age Cohort	18	19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60+
Population	5.1	4.0	20.3	16.8	12.2	10.2	7.5	6.0	4.9	3.3	9.7
Register	0.4	1.9	15.6	14.2	15.4	11.9	7.9	9.3	6.0	5.7	11.6
Under Registration	4.7	2.1	4.9	2.6	-	-	-	-	-	-	-
Over Registration	-	-	-	-	3.2	1.7	0.4	3.3	1.1	2.4	2.0

**Note:** The number of registered voters by age group has been provided by ECK. It includes a 1.04% of voters with unspecified age. They have been distributed proportional in each of the age cohorts.

The table clearly shows that, although the largest incidence of under registration corresponds to persons of 18 years of age, it is not limited to that group. There is a very significant under registration of persons between 20 and 29 years, which cannot be explained by problems in delays in receiving the ID card. The under registration for these age cohorts is compensated by a similarly over registration of persons of over 30 years of age, partially related to failures in deprogramming deceased voters.

There are other aspects related to the currency of the Register of Voters that might be the subject of estimates if the relevant statistics were available, which unfortunately is not the case in Kenya. For instance, Registers include a significant number of persons who, although still alive, might experience significant difficulties in exercising their right to vote. All registers include a number of people that have migrated to foreign countries or to far away regions of the country. Although some of them may return to the places of registration to vote, the proportion is not usually very high. But as usable statistics on external and integral migration are not available, it is difficult to make estimates for the case of Kenya.

In other words, the number of people in the Register is not always an adequate standard to measure participation, as it includes a significant number of deceased and permanent migrants. Since these errors are accumulative, registers “age”. After a number of years, they include so many inaccuracies that the only solution is to re-register the whole population. Although it is impossible to obtain precise data for Kenya, some estimates made for other countries can provide an idea of the magnitude of the gap. In Guatemala, for instance, where the Register of Voters was built afresh for

the Constituent elections of 1984, a very detailed study conducted in 2002 estimated the total number of deceased and migrants still in the Register at a level as high as 25%.

The relevance of the discussion above is not limited to the eventual “aging” of the Kenya’s Register of Voters and the eventual need to build a new one from scratch. In order to conduct proper evaluations of voter turnout, it would be inadequate to use the total number of registered voters for each polling station or constituency. The “real” turnout should be related to the number of registered voters remaining after perfectly purging it from deceased people that the ECK has not been able to identify; plus permanent migrants still included in the register. The adequate methodological approach for precise information would be, of course, the “list-to-people” analysis which, in the absence of adequate information on residence, could not be used in Kenya. However, the rough demographic analysis conducted above provides a reasonable approximation to the “state” of the register.

The main purpose of the adjustment is to provide a better approximation to the detection of potential anomalies in the turnout in certain polling stations, which would then lead to more detailed analysis of specific cases. At present, the approach used by ECK is to “suspect” of polling stations where turnout exceeds 100%, that is, where there are more cast ballots than people in the voters’ list. A more effective approach would be a comparison as follows:

$$\begin{array}{rcl}
 \text{Number of persons in voters' list} & & \\
 + & & \\
 \text{Persons not in the list but identified through} & & \\
 \text{black books (presiding officer should note these} & & \\
 \text{cases in log book)} & = & \text{Corrected estimate total} \\
 - & & \text{of registered voters} \\
 \text{Estimates of deceased voters still in list} & & \\
 - & & \\
 \text{Estimates of permanent migrants} & & 
 \end{array}$$

It is this corrected estimate that should be compared with the number of cast ballots. If this procedure is applied in the case of Kenya, possibly voters' turnouts greater than 85% (calculated in relation to the traditional measure – number of registered voters), should be considered as highly suspect. The corrected totals will not be the same for each province. In those provinces with a poor record of capture of deceased voters (like Nairobi), the corrected total is lower than in the case of other provinces with better record (like Nyanza).

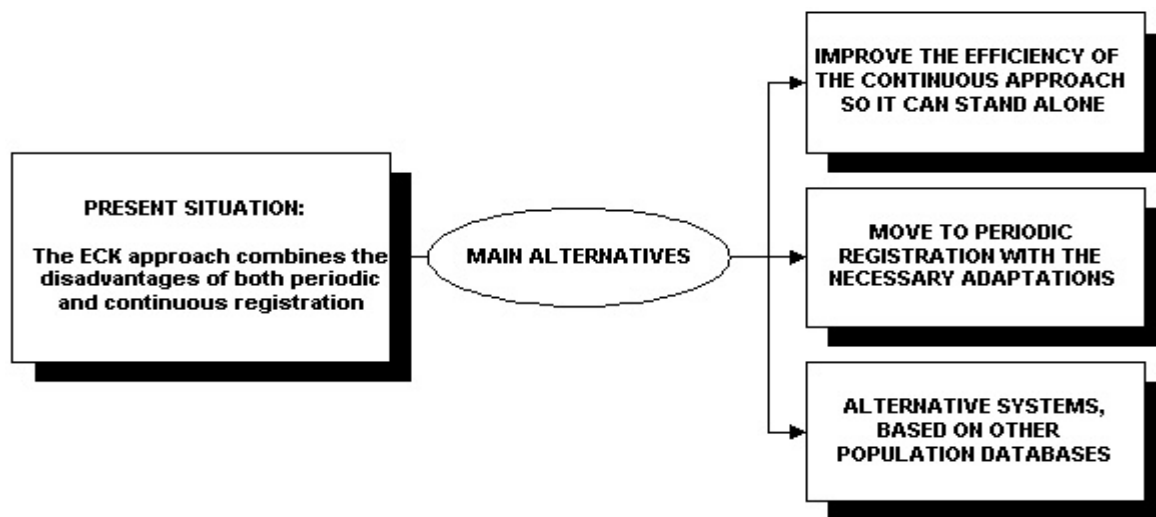
There is another aspect in which the approach used by ECK does not allow to use the Voter Register as an instrument of control. In a large majority of countries, once the documentation of a voter is verified and s/he is delivered the ballots, the name is crossed in the voters list by one of the polling station officers. When the ballots are counted, one of the main ways of reconciling the numbers at the polling station is to compare the number of ballots cast with the number of names crossed in the voters' list. It is a very effective control, particularly if the party agents have a copy of the voters' list and they also cross the names of voters when they are announced by the Presiding Officer.

In the context of Kenya, this reconciliation cannot be conducted at general elections, when Presidential; Parliamentary and Civic elections take place simultaneously. While the numbers of names crossed in the voters' list gives the number of registered voters that showed up to vote, it cannot be related to the number of ballots cast in any of the three elections. The crossing of a name in the voters' list only indicates that that person casted a vote in at least one of the elections, but nothing else. If voters were given the three ballots at the same time (as is done in countries much less developed than Kenya without significant problems), then the numbers would very approximately coincide. In Kenya, the process of voting follows an unusual choreography, as ballots are given one at a time. After her/his documents are verified, the voter receives a ballot for one of the elections (the order in which they are delivered is nowhere defined, but is generally assumed that voters receive first the Presidential ballot). The voter then marks the ballot, deposits it into the adequate ballot box, and returns to the polling officers to receive a second ballot (presumably for the Parliamentary election). After repeating

once again the procedure for the Parliamentary and the Civic elections, the voter has the finger inked, retrieves the document, and leaves. This awkward approach resulted in an unusual outcome: if a voter did not favour any candidate in a given election, the voter has two options: (a) the voter can opt for issuing a blank vote, or (b) the voter can opt for simply leaving the polling station without voting in one or more of the elections of the elections. Therefore, the differences between Presidential and Parliamentary turnout may be, in certain cases, very large. In Msambweni Constituency, the presidential turnout exceeded that of the parliamentary election by 34.15%, while in Makadara Constituency the parliamentary exceeded the presidential by 49.17%. In these condition, the possibility of using the voting lists as a control tool is inexistent in Kenya.

#### 7) Main alternatives for the compilation of the Register of Voters.

The present situation is not particularly adequate, and it might be necessary to consider alternatives. The graph below attempts to depict the three main strategies that can be adopted.



FIRST ALTERNATIVE- Improve the efficiency of the continuous approach so it can stand alone (without need for additional drives): As it was mentioned above, the approach chosen by the ECK was to open a registration office in each of the

constituencies. Because of funding problems, the number was reduced to 71, and the ECK has established a permanent presence at District level. No significant measures were taken to obtain information from other sources that would allow ECK to update the Register of Voters, as the possibilities in this regard do not seem to exist in Kenya. As argued above, only a very small percent of the population has chosen to register at the District office. The argument that this is the consequence of not being able to open an office in each constituency, as originally envisioned by the ECK, does not seem to be valid. The increase of the number of registration sites from 71 to 210 would probably have a limited impact in the number of people registering there. The IED study makes a more extreme suggestion: “We recommend that the ECK considers conducting continuous voter registration at the polling stations since they are easily accessible to the people (IED, 2007, p.vii)”. Was this recommendation meant to suggest keeping open the 20,655 polling centres on a continuous basis, just for the purpose of registering voters? That approach might diminish the problems, but the cost would be staggering.

The basic problem with the ECK approach, which is based in voluntary appearances by the citizens to get register, is that there is no real incentive (or need) for individuals to register unless there is an election, since the only use of the voters’ card is for voting. In Kenya, as in all other countries in similar situation, citizens will wait until the elections come close to take the initiative in registering, and small increases of registration points will not change the essentials of the situation. Therefore, the only available alternative left to the ECK is to maintain their expensive annual drives, where most of the work is done, while maintaining a costly network of offices throughout the country with a very low productivity.

One potential alternative that was considered at the time continuous registration was proposed might be reconsidered. It was suggested building a large network of registration points through specific arrangements with certain categories of public servants that may undertake the task of interfacing with the citizens, and receive a small fee in compensation. Just to give an example, the ECK could establish a focal point in each primary school and appoint a teacher/administrator as an ad-hoc registration

officer, collecting the information from the citizens and delivering the voters' card. The selected person would then submit the collected information to the ECK for incorporation in the central database, and verification of double/multiple registrations, similarly as it is done presently. One of the advantages is that whoever is in charge of registration would have some interest in increasing the number of registered persons, and it should be easier for her/him to transmit information to potential voters in the neighborhood. The additional workload for those who receive such commissions would be small. If the overall yearly work load is assumed to be 1,000,000 "registration events" per year and there are 20,000 registration points (in 2007, the number of primary schools throughout the country was 26,104), the average yearly workload for each agent would be 50 transactions, each of them probably involving less than 15 minutes. Primary schools had been used as a practical example to illustrate the possibility of a much larger network of agents, working on a very part-time basis, but other arrangements are possible. The administration of such a system would not require maintaining 71 field offices, and a much smaller number should be sufficient. Potential problems related to the collection of forms, transmission to ECK HQs, and the handling of multiple registrations might exist, but they could be easily solved with a well-designed system.

This alternative seems attractive, as it would expand the number of registration points to levels equivalent to those established during a registration drive. Since the registration in Kenya is a one-step process, there would be no particular urgency in transmitting the information to the ECK HQs, which would make it easier the operation of the system. The agents could transmit the collected forms to the provincial offices every two/three months, and the provincial offices would transmit it to HQs with a similar frequency. The IT department would then verify multiple inscriptions, and send information back to agents when a duplicate is detected or, as discussed below, eliminate previous inscriptions. The setting up of the system would involve a significant amount of initial work, but once in place, it should run smoothly.

However, in order to be an efficient alternative to the present system, the creation of a large scale of agents should result in substantive downsizing of the regional ECK

structure (the part-time agents could be managed with a smaller number of offices, probably one per province) and in the elimination of the special registration drives. In order to be an effective alternative, it would be necessary that Kenyan citizens take advantage of the larger network and register in numbers that make it unnecessary to undertake special registration drives. It is quite possible – and even probable – that the ECK would maintain the regional network in its present size, and argue for the need of special registration drives before general elections, possibly with significant support from the political parties. It is quite possible – and again probable – that Kenyan citizens would not care much about registering in the absence of the real motivation force – an election. Should that happen, the practical result would be a significant increase in the inefficiency of the system.

There are other practical issues concerning this alternative. For instance, the part-time agents will not be available at all times and applicants may come when agents are not available. On the other hand, if specific days and hours are set up, the applicant's turnout might be affected. It might not be easy to define the right level of payment for part-time agents. The amount that agents may expect might be excessive or, at the other extreme, inadequate to motivate them to perform adequately their work. However, these problems can be easily overcome. If the ECK is willing to undertake the significant changes involved in the alternative, and if it is expected that the answer of the population will be adequate, then the alternative has significant merits.

There are two other arguments usually raised against this type of approaches. First, Electoral Management Bodies tend to dislike it: these “agents” will not be “real” employees of the EMB, and cannot be trusted in the same degree that the officers that have been recruited by the EMB. However, there is more prejudice in this argument than factual data. The second argument is that political parties mistrust government officials and believe that such a system would be abused. However, the possibility of using a network of existing officers through ad-hoc arrangements is quite promising, and arguments can be brought to the open and defended in a public discussion. No system could stand in place if all arguments are essentially subjective opinions.

However, the strongest argument against the improvement of continuous registration through the increase in the number of permanent registration points is that people would still not register, even in those improved accessibility conditions. The comparison between the number of people who live in places within reasonable distance of one of the existing ECK offices and become 18 years of age and those who effectively register is appalling – only a small percentage does so.

SECOND ALTERNATIVE: Move to periodic registration with the necessary adaptations:

Since the amount of registration conducted by the registration officers during the year is almost negligible, another – rather extreme - alternative would be simply to close down or substantially diminish the size and/or number of the ECK decentralized offices, and update the Register of Voters through annual drives as presently done. Given the poor record of ECK District offices, not much would change, and ECK would have substantial savings.

It would not be strictly necessary to conduct annual registration drives. The reason for having these drives is to keep the Register of voters updated, in case of by-elections. As mentioned above, the law does not permit registration to take place once a seat (parliamentary or civic) has been declared vacant. There is an obvious reason for this measure: if the registration of voters is kept open when a by-election takes place, it would be easy to “import” voters to the constituency, as it is so difficult to verify residential entitlement. However, if registration of new voters is limited to those that had reached 18 years of age since the time of the last registration drive, and the possibility of transfers is excluded or tightly controlled (which might require a simplification of the conditions for entitlement), the possibilities of illegally transferring voters would be significantly diminished.

The alternative described above creates a different mix of continuous and periodic registrations. It involves doing a full-scale national registration exercise before each general election, which ensures a high level of currency of the Registers. The effort necessary for these national drives need not be larger than that of 2007, as argued above. However, the Register of Voters built for a general election will not be

discarded, and it will still be used for the by-elections in between general elections after a restricted constituency-level update, as described above.

A system based on a full registration exercise before every election, complemented with special registration drives limited to those voters who have reached voting age in case of by-elections, will be simple to administer, and it should be sufficient to maintain a small network of strong provincial ECK delegations. However, such a system would have a limited flexibility and would need adequate time for conducting partial registration in case of by-elections. It might be necessary to extend the period between the moment in which a seat is declared vacant and the date of the by-election. Furthermore, it will complicate the organization of a new parliamentary election in case of dissolution of the Parliament according to Section 59 of the Constitution.

It should be mentioned that such a change would have significant perception issues. It would involve moving from a modern (in theory) but inefficient (in practice) system to an efficient, although somewhat primitive, system. Therefore, it would be perceived as a step backward, rather than a possible move in the right direction.

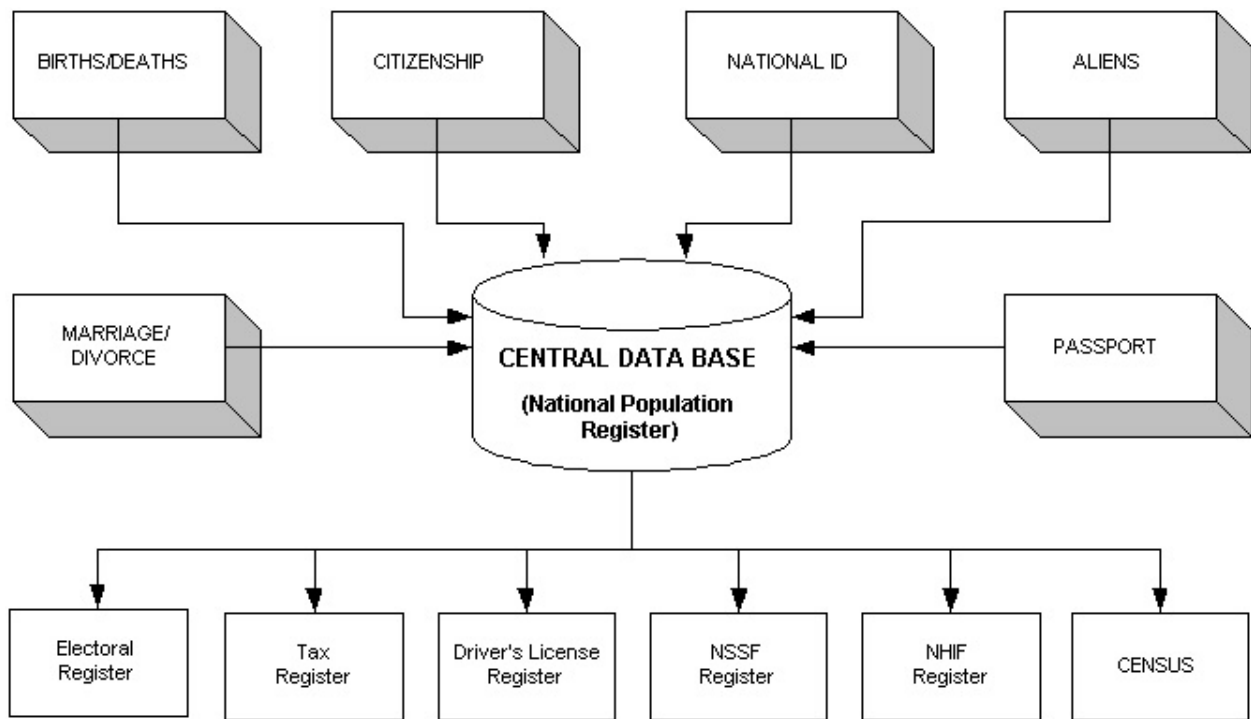
THIRD ALTERNATIVE: Alternative systems, based on other population databases: In most countries there are several public organizations that maintain large population databases, from which it is possible to derive a voters' register, thus avoiding the costs that Electoral Management Bodies (EMBs) must sustain for the maintenance of a network of offices, in the case of continuous registration; or the costs of conducting periodic registration drives; or the cost of both, as it is the case of Kenya. In some cases, like Denmark, the population data base used as a basis for the voters' list is the national civil registration system maintained by the Ministry of Interior. In other cases, the population data base used is that backing a national identification document that may be issued by other public organization. Although these two cases are the most common, there are examples of the use of other data bases. In Sweden, for instance, the basic lists are provided by the Tax Office. In Iraq, given the absence and limitations of most available data bases, the lists used for food distribution (established due to the scarcity caused by sanctions) were the basis for the Register of Voters used for the 2005 elections.

The use of another population database as the initial source of information does not mean that the EMB will relinquish its control over the decisions of who should and who should not be in the voters' list. The EMB would define the criteria that will be used to extract the sub-set of citizens who are relevant for the purpose of registration. The EMB would also eliminate persons who have been deprived of the right to vote and make all other necessary adjustments.

Under these systems, there will be little cost for the EMB related to the collection of data for voter registration because the key information would have already been collected and compiled for the specific purposes for which the other database was established. Efficiency considerations are quite different. While a Register of Voters is only used for elections, other population databases are used for a variety of administrative purposes, which justifies sustaining their higher compilation cost. While the motivation for registering in a Register of Voters is only the acquired capacity to vote, a citizen not included in a civil registry or in the database behind a national ID document may not have access to a wide variety of social services, such as employment or unemployment benefits, health care support, and education. This is a very strong incentive, and the coverage of other population data bases like the Civil Register or a national ID card is much higher than that of the Register of voters. It might be recalled that, in the case of Kenya, the number of people included in the voters' lists used in the 2007 general elections was 14,3 million, against the 19.8 million of persons over 18 years of age who had been issued national ID cards at the time the Register of Voters was compiled.

Not all population data bases can be used to extract a Register of Voters. For instance, Civil Registers exists in practically all countries. However, not all of them can be used as a basis for a Register of Voters. Quite frequently Civil Registers have a decentralized structure, where municipalities maintain the registers for their area of influence, usually as a collection of documents. This kind of civil register cannot be used as the basis of a Register of Voters. It is only when the Register is fully computerized and updated, that it can be used as the basis for a voters' list, as it is the case of Denmark.

In most cases, the Register of Voters is more easily derived from the database that sustains a national ID card. In the case of Kenya, there has been a proposal for the integration of Population Registration Systems (IPRS). The initiative is based on the fact that population services are carried out by various Government Agencies operating under different legal mandates, such as the Civil Registration Department, National Registration Bureau, Immigration Bureau, Registrar General, National Social Security Fund, National Hospital Insurance Fund and, of course, the Electoral Commission of Kenya. The strategy of the system is based on the introduction of a unique Personal Identification Number (PIN) to be assigned at birth for all Kenyans. Residents will also be assigned a PIN, with a number that will allow differentiating Kenyans from non-Kenyans. The PIN will serve as a common identifier in all subsequent registrations. For example, upon reaching the age of majority, the PIN will be the basis of ID and voters registration. The graphic below describes the logic of the system:



The information in the database will include the following: Personal Identification Number (PIN); Names; Date of Birth; Place of Birth; Gender; nationality; Marital Status;

Residence/Physical address; Occupation; Biometrics; Date of Death; Ethnicity/Race. As all the information will be in electronic form it will be possible to derive the Register of Voters from the National Population Registration Database.

While the linking of national population databases is a significant step ahead, not all the problems are automatically solved. For instance, the performance of the national ID database in eliminating deceased might not be significantly better than that of the Register of Voters. Similarly, the currency of the new database in relation to addresses may present some problems. Important documents, like the national ID card, do not lose validity if a person changes residence and does not inform the authorities of the fact. As a consequence, there might be problems with the currency of addresses in the database. These problems might introduce difficulties in linking voters with specific polling stations, which might be further compounded if the definitions of residence used by the various users are different. Typically, the rather flexible definition of residence for voting would be inadequate for a national ID document. While there are adequate technical solutions for these problems, they are not always easy to implement. In case of adopting such approach, the ECK would probably need to conduct a thorough study of these problems.

The alternative of moving to a system based on a National Population Register that would feed other population databases, is consistent with modern practices and tendencies. However, it is not exempt of problems. First, the ECK would be forced to rethink the role of its regional network. Without being involved in registration, the main leiv motif for the network of regional offices would be lost, and the work load of these offices in-between elections would be insignificant, unless re-defined. Therefore, unless it is the ECK who is in charge of the new Register, a large proportion of their field personnel should be transferred to the new institution, who would benefit from an influx of experienced personnel. The second problem has already been mentioned: the difficulties of linking voters to polling stations under this system. The third problem relates to implementation. Experience from other cases suggests that the full implementation of a system like the IPRS takes not less than two years, and frequently more. Therefore, unless its implementation begins in 2009, the system will not be fully

in place for the 2012 general elections. The ECK should be aware of this possibility, and have alternative plans at hand.

However, this is the way forward for ECK – most other EMBs are moving in similar direction. At least, even if the IPRS is not implemented, it would be quite feasible to integrate the issuance of the National ID card with the registration of voters, so that when a person requests the ID card, s/he will automatically be inscribed in the Register of Voters and informed of the location of the polling station where s/he should vote (a cheap voter card containing such information can be provided to the voter). ECK should begin immediately the necessary studies to implement this solution (resorting, if so desired, to external technical support). The total budgetary resources devoted to the maintenance of the field offices and the conduct of yearly registration drives can be estimated at around 5,000 million Ksh<sup>2</sup>. 350 persons work at the ECK network of field offices. If a significant part of the human and budgetary resources today devoted to the registration of voters is transferred to the implementation of the new system, this would allow a much faster implementation of the IPRS, which should be the final goal of both ECK and the Government of Kenya.

#### 8) Some potential adjustments in other aspects of registration.

Qualifications for entitlement: The qualifications for entitlement to vote in a specific constituency or ward are unnecessarily complicated and of extremely difficult verification, particularly in the case of the entitlement to vote in civic elections. Qualifications could be limited to residence, unless there are strong arguments for maintaining some of the other categories presently included.

Requirement of voters' cards for voting: This seems to be a redundant requirement. The presentation of the voters' card is a necessary but not sufficient requirement to exercise the right to vote. It is necessary, because unless produced at the polling station the voter would not be allowed to exercise the right to vote even if s/he is included in the voters' list, which should be the real proof of registration, as the voters'

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<sup>2</sup> As mentioned above, ECK spent around 2,300 million Ksh in the two registration drives in 2007. In each of the years 2003 to 2006, the ECK spent an average of 350 million in the maintenance of the field offices, and an equivalent amount in conducting the annual registration drives.

card can be easily counterfeited. It is not sufficient, as even if the voter produces a voter' card, s/he cannot vote unless her/his name is included in the register.

The entitlement to vote in a given polling station is established by the appearance of the name of the voter in the Register, and not by the possession of a voter's card. The identity is proven through the exhibition of the national ID or a passport. If the name of a voter is found in the list, and the identity can be proven by the national ID, what would be the purpose of demanding the voters' card for voting? The voters' card is useful to the voter and the electoral authorities as a reminder of the number of the voter and the polling place where voting will take place, but it is not an essential electoral document.

The problem of young people's registration: A Kenyan citizen who reaches the age of 18 years is entitled to vote, and should not be deprived of that right on account of administrative issues – like the excessive time it takes to obtain the national ID card. This should be considered by the electoral authorities as a matter of principle and it should be the responsibility of the ECK to ensure that this group of people is able to vote. The requirement to present the national ID card is established in the regulations, and could easily be changed, allowing people in that group age to present alternative documents. Another alternative would be to request the National Registrar of Persons to extend the national ID card at the age of 16, which would solve the problem in most of the cases.

Transfers and cases of double and/or multiple registration: The ECK has usually been adamant in eliminating double and multiple registrants from the electoral rolls. In 2007 the ECK, under pressure from the political parties, allowed to vote those persons with double registration, provided they surrendered their cards at the moment of voting. It should be noted that the responsibility for the double registration might lie on ECK itself, and not on the voter. When a person transfers from one constituency to other, the registration officer in the receiving constituency should send the information to the registration officer in the constituency of origin, so that the name of the voter can be eliminated from the Register. There are some cases in which this is not done properly, and that such a mistake would be considered as the fault of the innocent voter. Given this possibility, it might be better to let in place not the first but the last inscription.

Rather than compiling a list of double registers and letting them to vote or otherwise depending on the decision of the political parties, as done presently, the ECK might simply eliminate previous inscriptions. Each polling station should receive, on occasion of an election, a list of the people who has been transferred to other constituencies/polling stations. In that way, if a person shows up to vote in her/his old polling station, s/he can be reminded of the change.