

*KASIPUL – KABONDO CONSTITUENCY*

*BY – ELECTION*

*HELD ON 1<sup>ST</sup> MARCH 2006*

*OBSERVATION REPORT*

*BY*

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## ACKNOWLEDGEMENTS

*On behalf of the Institute for Education in Democracy (IED), I would like to sincerely acknowledge and appreciate the generous support and funding from the Royal Netherlands Embassy (RNE) and the Department for International Development of the British Government (DFID) that made the observation of the Kasipul Kabondo constituency by-election and preparation and production of this report possible.*

*My gratitude and appreciation also go to the Constituency Observers who tirelessly observed and kept abreast with the political happenings in the Kasipul Kabondo constituency and also for assisting IED by coordinating the recruitment and training of the Poll Watchers for the by-election. I was impressed by the commitment and vigilance of the Poll Watchers in observing the polling day events from the opening of the polling stations to their closing and announcement of results. The compilation of this report would not have been possible without their valuable reports and inputs.*

*I would also like to recognise and thank our Board of Directors and in particular; Rev. Jephtha Gathaka who took time from his busy schedule to observe the Kasipul Kabondo constituency by-election. Special thanks also go to Dr. John Munuve, Mr. Njonjo Mue for sparing time to participate in the observation of the Kasipul Kabondo constituency by-election.*

*I acknowledge the special role and commitment of IED staff in the observation of the by-election and compilation of this report. I acknowledge with many thanks the role played by Peter Aling'o, Immaculate Njenge-Kassait, Okeru Otieno, Fred Lumiti, Elizabeth Marete, Jectone Oyugi, Mary Ndinda, Collins Onsembe, Anne Osogo, Charles Okere, Peter Ndungu, Josephine Njuguna, Richard Nderitu, Moses Ngarika Muigai, and Janet Ekesa. Together, the staff, Rev Gathaka, Dr. John Munuve and Njonjo Mue constituted roving teams, which energetically and diligently traversed the constituency from one polling station to another to supervise the Poll Watchers and also observe polling day activities.*

*Special thanks go to Peter Aling'o, Immaculate Njenge-Kassait and Nora Achieng' Otieno for compiling this report. In addition, I would like to acknowledge the special contributions and inputs of other IED staff members towards this report.*

*I am also very grateful to the observer team from the US Embassy led by Mr. Michael Kamau for participating with IED in the observation of the Kasipul Kabondo constituency by-election and for sharing information with us.*

*Finally, I must thank the Electoral Commission of Kenya (ECK), particularly the Commissioners Gabriel Mukele (ECK Vice Chairperson), James R. Njenga and Jeremiah Matagaro who were in the field in Kasipul Kabondo constituency during the by-election for their professional work and immense cooperation they offered to*

*IED during the observation exercise. I must include in this vote of thanks the Returning Officer, the Assistant Returning Officers, the Presiding and Deputy Presiding Officers and other election officials for the kindness and cooperation they extended to IED Observers during the by-election. I am also indebted to the ECK Chairperson, Mr. Samuel Kivuitu for the accreditation of observe the by-election and above all the co-operation during the exercise.*

*IED takes full responsibility for the views and opinions expressed in this observation report.*

***KOKI MULI***  
***EXECUTIVE DIRECTOR***

### LIST OF ABBREVIATIONS

1. *Boda boda* - *A local name for bicycle transport*
2. *PO* - *Presiding Officer*
3. *DPO* - *Deputy Presiding Officer*
4. *RO* - *Returning Officer*
5. *DRO* - *Deputy Returning Officer*
6. *DEC* - *District Elections Coordinator*
7. *ECK* - *Electoral Commission of Kenya*
8. *KANU* - *Kenya African National Union*
9. *LDP* - *Liberal Democratic Party of Kenya*
10. *FORD-K* - *Forum for the Restoration of Democracy in Kenya*
11. *LPK* - *Labour Party of Kenya*
12. *DP* - *Democratic Party of Kenya*
13. *SDP* - *Social Democratic Party of Kenya*
14. *NDP* - *National Development Party of Kenya*
15. *NARC* - *National Rainbow Coalition*
16. *CDF* - *Constituency Development Fund*
17. *IED* - *Institute for Education in Democracy*
18. *KDOP* - *Kenya Domestic Observation Programme*
19. *LUO* - *Nilotic Tribe speaking the Luo language and mainly found in Nyanza Province of Kenya*

## EXECUTIVE SUMMARY

*The Institute for Education in Democracy (IED) is a non-governmental organisation providing non-partisan leadership in monitoring the democratic process through programmes in the electoral process, civic/voter education, research, advocacy and provision of consultancy services. The main focus of IED's work since its inception in 1993 has been the provision of non-partisan and gender-balanced information and skills to empower citizens to effectively participate in the governance process and to enhance positive political behaviour.*

*IED has also been involved in the monitoring and observation of elections and the electoral process in Kenya and around Africa since its inception in 1993. For example IED monitored and observed all the by elections ensuing from the 1992 General Election. In 1997, IED together with the Catholic Justice and Peace Commission (CJPC) and the National Council of Churches of Kenya (NCCCK) monitored the General Elections. In 2002 General Elections, IED formed part of the Kenya Domestic Observation Programme (K-DOP), which was a coalition of civil society organizations, which came together to monitor and observe the electoral process and the general elections. In addition, IED coordinated a long-term observation of the electoral process in Kenya of about 178 United Nations Volunteers to monitor the provision of voter education (ECK/IED project) and the conduct of the electoral process by the ECK. IED has observed over fifty (50) by-elections in Kenya since 1993 and continues to monitor and observe the by-elections subsequent to the 2002 General Elections.*

*There are a number of reasons why IED monitors and observes the electoral process. Key objectives include the following:*

- To determine the credibility of the electoral process and the elections.*
- To determine the freeness and fairness of the elections process*
- To build credibility, integrity and confidence in the electoral process and elections*
- To ensure that the conduct of the elections was transparent and professional*
- To make proposals and recommendations to stakeholders in the electoral process aimed at the enhancement of positive political behaviour, culture and democracy.*

*The goal for monitoring the electoral process and observing elections is to determine that the democratization process is on-course and that every eligible person is accorded his or her political and civic rights. These include the right to fair and proportional representation<sup>1</sup>, the right to good leadership and the right to effectively participate in democratic, governance and development processes in the country.*

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<sup>1</sup> *Miscellaneous Civil Application No 975 of 2001 Hon John Michuki versus Attorney General, The Electoral Commission and the Constitution of Kenya Review Commission, dealt with this issue and affirmed the right to equal and proportional representation.*

*Therefore, it is on the basis of the foregoing reasons that IED observed the Kasipul Kabondo constituency by-election. The by-election was held on 1<sup>st</sup> March 2006 following the death of the former Member of Parliament (MP), Hon. Peter Owidi. The late MP died on Thursday, 24<sup>th</sup> November 2005. Four candidates vied for the Kasipul Kabondo constituency seat. They were Mr. Cornel Paddy Ahenda of the Liberal Democratic Party (LDP), Mr. Gerald Otieno K'Opiyo of National Rainbow Coalition party (NARC), Mr. Nabashon Odhiambo Ng'wena of the Labour party of Kenya (LPK) and Mr. Wilson Onyango Owalo Owawo of the Democratic Party of Kenya (DP). The LDP candidate Mr. Cornell Paddy Ahenda merged the winner of the by-election, with a total of 18,202 votes.*

*Few sporadic incidences of violence were observed in the by-election. There were also allegations of voter bribery, voter influence and inducement but IED observers did not witness them. The polling day activities, including the counting, tallying and announcement of results were in general conducted and managed professionally and in accordance with the acceptable standards for a democratic election. The polling day was also generally peaceful. The voter turnout in the by-election was low at 32.45%. Although this could be justified on the fact that the by-election occurred during a market day and in the rainy and planting season in the constituency, it none-the-less raises the fundamental question of voter apathy. It also reflects a general lack of a serious democratic culture amongst the constituents. Despite the low- voter turn out and the few incidences of electoral irregularities and malpractices, the people of Kasipul Kabondo were accorded a fair opportunity to express their free will, which they did through the vote. IED is of the overall view that the by-election was conducted professionally and transparently in accordance with the electoral rules and procedures. Therefore, the by-election in IED's assessment was credible, free and fair.*

*From the observation of the Kasipul Kabondo by-election, IED would like to report the findings and make recommendations as follows:*

### RECOMMENDATIONS

#### *i) Voter turnout*

*The voter turnout of 32.45% in the by-election was low and was indicative of serious voter apathy. Therefore, there is a need to educate the electorate on the importance of registering as voters and above all the importance of voting not just during general elections, but also in by-elections. A trend was also observed where voters deliberately waited to be "facilitated" before they could go to vote. The local Luo word gonywa was coined and used widely to communicate the need for the necessary "facilitation" The gonywa practice became part of the by-election. Such practices must be discouraged and fought at all costs so that they do not become institutionalised as part*

*of the voters' culture in Kenya. This is because some voters would not bother to turn out to vote unless they are motivated through such practices. Furthermore, there is a possibility that such practices could impair the voters' ability to make an informed choice. There is a need for ECK and other voter education providers to focus more attention on voter education, with special emphasis on voter registration and voter turnout. Special attention must be given to the youth in order to encourage them not only to register as voters but also to turnout to vote.*

*ii) Voter bribery, influence and undue influence*

*Voter bribery, inducement, voter influence and undue influence continue to feature in Kenya's electoral process. In the context of Kasipul Kabondo constituency by-election voter bribery, influence and undue influence were observed. In particular, a terminology known as "gonywa" emerged and became part of the vocabulary during the by-election. The police and ECK need to be more vigilant and proactive and should employ concrete deterrent mechanisms against electoral corruption. The arrest and prosecution of the perpetrators of electoral corruption would serve to deter corrupt electoral practices.*

*iii) Assisted voters*

*The POs and DPOs assisted most of the voters who required assistance in order to vote. The method, which these officials adopted to assist the needy voters, clearly compromised the secrecy of the vote. Prior to the 2002 General Elections, new regulations<sup>2</sup> were adopted which allow the voters who need assistance to be assisted by someone of their choice and whom they trust. This was meant to remove the need for the Presiding Officers and their deputies to assist the voters in the presence of party agents, observers and everybody present at the polling station. Put in another way, it was meant to safeguard the secrecy of the vote and to avoid exposing the needy voters to intimidation from election officials, party agents and those present in the polling hall. However, it appears from the by-election that the new regulations have not been fully internalised and operationalised. Therefore, ECK must deliberately focus and emphasize on this at the level of training the election officials and through spot checks during polling to ensure the new regulations are fully internalised and operationalised. The voters also need to be educated on procedures for assisting voters as laid down in the law to enable them understand and appreciate the modalities of the same.*

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<sup>2</sup> Legal Notice No. 172. *The Presidential and Parliamentary Elections (Amendment) Regulations.*

iv) *Electoral violence*

*Although cases of violence in the by-election were a few and sporadic, ECK and other stakeholders in the electoral process need to reflect on the problem of electoral violence from a conflict management perspective and find long-term solutions to it. In addition, citizens should foster a culture of political tolerance where every election is seen as a competitive process with rules and procedures, which require to be respected, rather than a war of survival. In addition, ECK and the police must remain vigilant and proactive in dealing with electoral violence rather than remaining reactive. ECK must also stamp its authority effectively in terms of ensuring that political parties and candidates sign, respect and adhere to the electoral code of conduct. The ECK must also scrupulously enforce the electoral code of conduct. Political parties and candidates must also take the responsibility of ensuring that there is no violence during elections. In this regard, they must sign, respect and adhere to the electoral code of conduct. In addition, they must reign in their supporters and restrain them from engaging in electoral violence.*

v) *Gender concerns*

*Although ECK has increasingly encouraged more women to participate in the electoral process, this practice was not ensured in the by-election. The ECK recruited very few women as election officials as compared to men. In fact, out of the 97 Presiding Officers recruited, there were only 24 female Presiding Officers, and out of the 107 Deputy Presiding Officers only 24 were females. In addition, out of the 432 Polling Clerks recruited, only 126 were females. Gender imbalance was also evident at the level of the aspirants and candidates who participated in the by-election. Only one female aspirant participated in the by-election at the level of party nominations. The female aspirant lost in the LDP nomination process. As a result, there was no female candidate in the by-election.*

*Therefore, there is a need to increase participation women in the electoral process. The ECK should for instance put in place deliberately mechanisms to ensure gender balance in the recruitment of election officials. Other players in the electoral process should make similar efforts towards fully engendering the electoral process. For example, political parties need to mainstream gender and adopt affirmative action in their internal structures and democratic processes including elections. They must consider adopting measures that would deliberately facilitate effective participation of women in elective politics and leadership in Kenya. There is also a need to encourage women to register as voters in large numbers and to turn out to vote for the candidate of their choice, especially female candidates. In this respect, IED urges a comprehensive review of the Constitution and other electoral laws in the long term or*

*minimum amendments to the Constitution and other electoral laws in which mixed member proportional representation should be adopted to give women more and increased avenues for participation in the electoral process.*

*vi) Training of election officials*

*The performance of the ECK in the management and conduct of the by-election was generally professional. The Election Officials were generally well trained and carried out their duties professionally. They were also very cooperative and ready to assist voters and observers. The ECK Commissioners who were on the ground for the by-election were also very professional and very cooperative. However, performance setbacks were observed in relation to late opening of some polling stations. This was largely due to late arrival of some Election Officials at the polling stations. This resulted in unnecessary delays in opening the affected polling stations, thus inconveniencing voters. Therefore, it is important for ECK to emphasize to the officials during training on the need to adhere to high professional standards. The Returning Officers and the Presiding Officers have a professional responsibility to ensure that all Election Officials meet the required performance standards, including discipline. The ECK should also consider continuous training for the Election Officials. Procedures of assisting voters to ensure secrecy of the ballot and proper scrutiny and fast but accurate counting of votes etc should be priority areas for such training. The ECK should also develop and put in place performance standards and mechanisms for evaluating the performance of the Election Officials. Evaluation of performance will assist ECK in identifying and retaining competent and professional officials from its pool of trained Election Officials.*

*vii) Training of political parties, party candidates, agents and supporters*

*Political parties, party candidates, agents and supporters remain the key perpetrators of electoral violence, voter bribery, influence and inducements and other electoral malpractices. Party candidates and agents still committed the don'ts of electoral process. IED recommends that much greater attention should be paid to the training of party candidates and agents, by providing a thorough, uniform and better training.*

*IED recommends that political parties and party candidates must take greater responsibility towards in safeguarding the integrity of the electoral process by ensuring that it remains peaceful, free and fair. Indeed, the permanent solution to electoral violence and other electoral malpractices lie with political parties, politicians and their supporters. This requires a change of attitude and perception towards the electoral process. It also requires the inculcation of a democratic and tolerance culture. Therefore, political parties and politicians learn to exercise restraint and tolerance in political and electoral activities. They should also begin to embrace civic/voter education in their programmes and activities and disseminate the same to*

*their members and supporters. The ECK must also ensure that the political parties, party candidates and agents sign and adhere strictly to the Electoral Code of Conduct.*

*viii) Voter Education*

*From IED's observation of the by-election, especially polling day, more needs to be done towards voter education. The low voter turnout in the by-election is a clear indication of voter apathy. IED urges all stakeholders in the electoral process, including political parties to do more in terms of educating the people on their roles and responsibilities in the democratic, political, governance and electoral processes. In particular, the ECK, which has a constitutional mandate to undertake voter education, must take the lead by doubling its efforts. The ECK should also consider developing a standard curriculum for voter education and begin to work in partnership and collaboration with other voter education providers to disseminate voter education using a standard curriculum. The ECK in particular and other stakeholders should also come up with innovative ways, strategies and methodologies for disseminating voter education. Incorporating voter education in the curriculum of schools (from higher primary level to secondary schools and tertiary institutions) is one such innovative way, which should be adopted.*

*ix) Performance of political parties and politicians*

*Elections are basically a contest between various political parties and politicians. As crucial players in the electoral process, political parties and politicians have an obligation and civic responsibility to ensure that the electoral process is peaceful, free and fair. The degree to which election will be judged as having been credible, peaceful, free and fair depends largely on the behaviour and conduct of political parties and politicians. Indeed, political parties and politicians have a significant impact in the democratization process in that they can contribute to or undermine any gains made in the democratization process through positive or negative influence. Therefore, it is significant that political parties and politicians strengthen their capacities and nurture a culture of tolerance, conducive for enhancing the democratisation process and the legitimacy and credibility of the electoral process.*

*There is also a need for political parties to adopt clear nomination and election rules, which should be applied and followed strictly during the party nominations. Despite the fact that nominations strictly belong in the realm of the internal affairs of political parties, political parties must begin to see the nomination exercise as part of the democratization process and therefore open it up for competition requiring independent umpires. In this regard and to make the nomination exercise more credible and professional, political parties must begin to involve a professional independent body like the ECK to help them manage and conduct the nominations.*

*In addition, they should involve the participation of independent observers in the process.*

*IED also urges all the stakeholders involved especially the Ministry of Justice and Constitutional Affairs, Kenya Law Reform Commission and the ECK to speed up the process of adopting the pending Political Parties Bill into law. Through this Bill, sanity and order will reign in the nomination process of political parties. In addition, there will be necessary checks and balances to ensure that political parties do not flout their nomination and election. Finally, officials and leaders of political parties must begin to embrace impartiality during the party nominations. In this regard, they must begin to refrain from imposing their choice of candidates on the people. In other words, they should keep off the nomination process and leave it for the party members/voters to make the decision through popular vote.*

*x) Reform and consolidation of electoral laws*

*IED proposes that ECK should pursue with vigour reform and consolidation of electoral and other related laws, which can ensure that ECK has the requisite power, authority and independence to investigate and prosecute offenders of electoral laws. Such laws would also ensure that the police are fully under and responsible to the ECK during the elections. Such laws would also level the political playing ground further and enhance the independence of the ECK. In this regard, IED urges the ECK, the Ministry of Justice and Constitutional Affairs, the Kenya Law Reform Commission and the Office of the Attorney General to speed up the process of adopting the pending Political Parties Bill into Law. In addition, they should fast track the completion and adoption into law of the pending consolidated Elections Bill 2005 developed with the support from IED.*

*xi) Voters register with voters' photographs and bio data*

*Accurate and reliable voters' register is the bedrock of a democratic electoral process. In order to achieve accuracy and enhance the credibility and integrity of the voters' register, it is recommended that ECK should consider introducing a new voters' register bearing voters' photographs and bio data. This will assist in eliminating the problem of disenfranchisement of voters. It will also enhance the process of identifying voters and eliminate reliance on original national identity cards as the primary identification document for voters. It will also help streamline the documents required from voters before they are allowed to vote. Indeed, with a register bearing the voters photograph and bio data, a voter will only be required to carry one identification document, which can either be a voters' card or national identity card, and not both as is currently happening.*

*We hope that the information and recommendations in this report will be of great use to everybody concerned with or interested in the electoral process in Kenya. IED*

*recommends that the ECK and other relevant institutions of governance including political parties identified in the report will implement the recommendations to facilitate the evolution of a culture of democracy and good governance in Kenya.*

## CHAPTER 1: INTRODUCTION

*The Institute for Education in Democracy (IED) is a non-governmental organisation providing non-partisan leadership in monitoring the democratic process through programmes in the electoral process, civic/voter education, research, advocacy and provision of consultancy services. The main focus of IED's work since its inception in 1993 has been the provision of non-partisan and gender-balanced information and skills to empower citizens to effectively participate in the governance process and to enhance positive political behaviour.*

*IED has also been involved in the monitoring and observation of elections and the electoral process in Kenya and around Africa since its inception in 1993. For example IED monitored and observed all the by elections ensuing from the 1992 General Election. In 1997, IED together with the Catholic Justice and Peace Commission (CJPC) and the National Council of Churches of Kenya (NCCCK) monitored the General Elections. In 2002 General Elections, IED formed part of the Kenya Domestic Observation Programme (K-DOP), which was a coalition of civil society organizations, which came together to monitor and observe the electoral process and the general elections. In addition, IED coordinated a long-term observation of the electoral process in Kenya of about 178 United Nations Volunteers to monitor the provision of voter education (ECK/IED project) and the conduct of the electoral process by the ECK. IED has observed over fifty (50) by-elections in Kenya since 1993 and continues to monitor and observe the by-elections subsequent to the 2002 General Elections. IED monitors and observes the electoral process for the following objectives:*

*To determine the credibility of the electoral process and the elections.*

*To determine the freeness and fairness of the elections process*

*To build credibility, integrity and confidence in the electoral process and elections*

*To ensure that the conduct of the elections was transparent and professional.*

*To make proposals and recommendations to stakeholders in the electoral process aimed at the enhancement of positive political behaviour, culture and democracy.*

*The goal for monitoring the electoral process and observing elections is to determine that the democratization process is on-course and that every eligible person is accorded his or her political and civic rights. These include the right to fair and proportional representation<sup>3</sup>, the right to good leadership and the right to effectively participate in democratic, governance and development processes in the country.*

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<sup>3</sup> *Miscellaneous Civil Application No 975 of 2001 Hon. John Michuki versus Attorney General, The Electoral Commission of Kenya and the Constitution of Kenya Review Commission, dealt with this issue and affirmed the right to equal and proportional representation.*

*It is on the basis of the foregoing that IED participated in the observation of the Kasipul Kabondo by-elections. In this observation report, IED gives a detailed account of the process, events, and activities before, during, and just after the holding of the by-election. Detailed analysis and assessment of the by-election and the issues involved, including the performance of all the actors in the by-election are also given. IED's findings and conclusions on the by-election are also given. Finally, IED offers some critical recommendations and the way forward.*

### *1.1 Kasipul Kabondo By-Election.*

*Kasipul Kabondo Parliamentary by-election was held on 1<sup>st</sup> March 2006. The by-election arose as a result of a vacancy created by the death of the immediate former Member of Parliament (MP), Hon. Peter Owidi. The late MP died on Thursday, 24<sup>th</sup> November 2005. He was buried on at his Nyahera rural home in Oyugis town in Rachuonyo district.*

*Observation of the Kasipul Kabondo Parliamentary by-election was significant in a number of ways. Firstly, the by-election occurred at a time when various political parties, which came together to form the government after the 2002 General Elections under the National Rainbow Coalition (NARC) party, had indicated that they were no longer interested in the coalition. Hence, it was interesting to observe how on the one hand, NARC as a party, and on the other hand, the individual political parties, hitherto partners in NARC, participated in the by-election. The politics in the Kasipul Kabondo by-election was further interesting to observe, given the fact that NARC as a party fielded its own individual candidate to contest against the candidates fielded by some of its constituent political parties, namely; the Liberal Democratic Party (LDP) and the Democratic Party of Kenya (DP).*

*Secondly, the by-election provided an opportunity to measure the political weight and impact of the NARC party as a coalition and the NARC constituent political parties, which had fielded their own candidates, especially the LDP, which has an overwhelming support not only in Kasipul Kabondo but also in the whole of Nyanza province. In this regard, the by-election was crucial for the LDP and the DP because it was the first time the two political parties were going it alone in an election as individual political parties rather than as partners in the NARC coalition. This meant that if LDP and DP were fielding candidates on their own, then there was need for them to formally pull out of the NARC coalition. Thus, the by-election offered an experimental ground for the two break away NARC affiliate political parties. The move to go it alone in the by-election especially for LDP came as a result of its exclusion from the new team of cabinet ministers, which President Kibaki announced in December 2005 following the defeat of the government backed Proposed New Constitution in the November 2005 Referendum. During the 2005 Referendum, LDP came together with KANU to form a coalition known as the Orange Democratic Movement (ODM) through which they successfully campaigned against the adoption of the Proposed New Constitution.*

*Thirdly, the by-election offered an opportunity to assess and determine the role and impact of the Orange Democratic Movement (ODM), the coalition between LDP and KANU, in the nominations, campaigns and election processes of the Kasipul Kabondo MP. Indeed, LDP and KANU had indicated that the two parties would through ODM, support and campaign for LDP's candidate in the by-election. Thus, the Kasipul Kabondo by-election offered an environment to assess the significance and impact of the ODM in the electoral politics in Kenya, and a basis to consolidate coalition politics in Kenya in the build up to the 2007 General Elections.*

*Finally, the by-election, like any other previous by-election, was a testing ground as to whether existing political culture and behaviour, external factors, political party affiliation and clannism are factors that influenced the by-election results or there the need to consider integrity, competence and performance of the contesting candidates.*

## **CHAPTER 2: BACKGROUND OF KASIPUL KABONDO CONSTITUENCY**

### **2.1: Background and Profile**

*Kasipul Kabondo constituency is one of the two constituencies<sup>4</sup> in Rachuonyo District in Nyanza province. It is divided into Kasipul and Kabondo divisions. Kasipul division comprises of Koderu, Konuong'a, South Kasipul, Kachien, West Kamagak, Kokwanyo and Kojwach Locations, while Kabondo division comprises of Kabondo-Ramba, Kasewe and Kabondo East Locations. The two major towns in the constituency, namely; Oyugis and Kosele are situated within Kasipul division. Oyugis is the major commercial town and the seat of the local municipal council while Kosele is the district headquarters and therefore the seat of the Rachuonyo district administration. The major centres within Kabondo division are Kadongo and Chabera.*

*Kasipul Kabondo constituency covers an area of about 620 Kilometers Square and has a population of more than 179,064 people<sup>5</sup>. It is constituency number 190 of the total 210 constituencies in Kenya. The constituency is comprised of 12 civic wards with majority of the wards being in Kasipul division. It has a total number of 97 polling centres and 108 polling stations/streams. It has a total of 64,437 registered voters. Kasipul division has a bigger proportion of the registered voters (over 40,000 registered voters) while Kabondo division as a smaller proportion of the registered voters (22,000 registered voters). Out of the 64,437 registered voters in the constituency, 31,493 (49%) are female while 32,944 (51%) are male. This means that there is need to mobilize more females to register as voters in order to have a gender balanced registered voters.*

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<sup>4</sup> The other constituency is Karachuonyo constituency.

<sup>5</sup> The population estimate is based on the 1999 Housing and Population Census in Kenya.

*Despite the fact that the Constituency is well known for its rich agricultural productivity, with the main agricultural produce being sweet potatoes, pineapples, bananas, sugarcane, tea, and coffee in some areas, poverty and underdevelopment still remains a serious problem. Indeed, like many other Constituencies in Nyanza province, the Constituency experiences problems of underdevelopment and poverty. Majority of the people in the constituency are poor and have no access to social infrastructure, including clean water. In fact, a large percentage (90%) of the people in the Constituency does not have access to piped water. Schools are ill equipped and beath facilities are almost non-existent. Therefore, the problems of underdevelopment and poverty formed the common agenda for contestants and their parties, with the campaign in the region being based on promises by candidates to establish processing plants for the agricultural produce, improve infrastructure and to uplift the standards of living in the region.*

*Politicians from the Kasipul division have for a long time dominated the electoral politics in Kasipul Kabondo Constituency. This is because of the high numbers of registered voters in Kasipul division. Infact, Kabondo division has not produced an MP for the last 33 years. Hon. Onyango Ayodo was the last MP from the Kabondo division.*

*The electoral politics in the Constituency for a long time been dominated by the opposition save for the 2002 General Elections which was different due to the NARC euphoria<sup>6</sup>. Indeed, since the first multi-party elections in Kenya in 1992, an opposition Member of Parliament has represented the Constituency. Hon. Gerald Otieno K'Opiyo contested the seat in 1992 on a FORD Kenya ticket and won. FORD Kenya, then headed by the late Hon. Jaramogi Oginga Odinga took all the 18 Parliamentary seats in Kisumu, Siaya, Migori, and Homa Bay Districts in Luo Nyanza. In the 1997 General Elections, Hon. Otieno K'Opiyo who chose to contest the seat on Social Democratic party (SDP) ticket lost to Hon. William Oloo Otula of the National Development Party (NDP). In the 2002 General Elections, Hon. Peter Owidi won the seat on a NARC ticket. The elections results for the Constituency since the first multi-party elections in 1992 are shown in the tables below:*

*Table 1: 1992 Parliamentary Elections Results for Kasipul Kabondo Constituency<sup>7</sup>*

<i>Candidate</i>	<i>Party</i>	<i>Votes</i>	<i>% of valid</i>
<i>Otieno K'Opiyo</i>	<i>FORD-K</i>	<i>30,618</i>	<i>98.83%</i>
<i>Auma Kapere</i>	<i>KANU</i>	<i>362</i>	<i>1.17%</i>
<i>Josiah O. Mbori</i>	<i>DP</i>	<i>-</i>	<i>0.00%</i>

<sup>6</sup> NARC euphoria swept the whole country with many regions previously known as opposition grounds voting as a block for the NARC government

<sup>7</sup> IED 1998, *Understanding elections in Kenya; a constituency profile approach* pg 328.

<i>Charles Ayako</i>	<i>FORD-A</i>	-	0.00%
<i>Total valid votes</i>		30,980	100.00%
<i>Rejected votes</i>		-	
<i>Total votes cast</i>		30,980	
<i>Voter turn out</i>		70.32%	

*Table 2: 1997 Parliamentary Election Results For Kasipul Kabondo Constituency<sup>8</sup>*

<i>Candidate</i>	<i>Party</i>	<i>Votes</i>	<i>% Of valid</i>
<i>William Oloo Otula</i>	<i>NDP</i>	31,746	82.865
<i>Peter Otieno Owidi</i>	<i>KANU</i>	4,984	13.01%
<i>Otieno K'Opiyo</i>	<i>SDP</i>	1,582	4.13%
<i>Rejected votes</i>		348	
<i>Total votes cast</i>		38,660	
<i>Voter turn out</i>		106.58%	
<i>% Rejected/cast</i>		0.90%	

*Table 3: 2002 Parliamentary Election Results For Kasipul Kabondo Constituency<sup>9</sup>*

<i>Candidate</i>	<i>Party</i>	<i>Votes</i>	<i>% Of valid</i>
<i>Peter Owidi Otieno</i>	<i>NARC</i>	29,548	82.89%
<i>Abenda Patrick Cornel</i>	<i>SDP</i>	5,873	16.47%
<i>Adongo Richard Omayo</i>	<i>KANU</i>	228	0.64%
<i>Rejected votes</i>		214	
<i>Total votes cast</i>		35,863	
<i>Valid votes</i>		35,649	
<i>Voter turn out</i>		58.51%	
<i>% Rejected/cast</i>		0.59%	

<sup>8</sup> *Ibid*, pg. 329.

<sup>9</sup> *IED 2002 General Elections Report; ECK 2002 General Elections Report pg. 155*



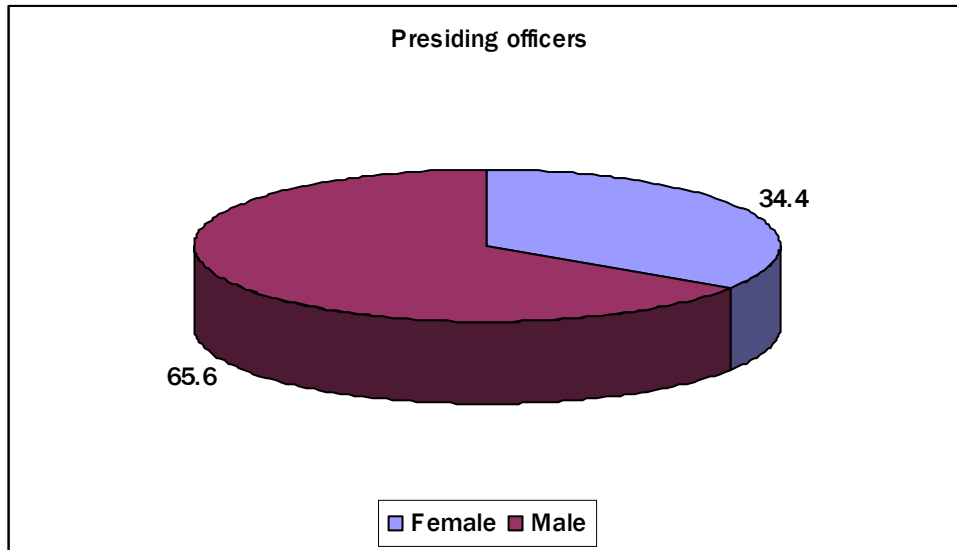
### CHAPTER 3: PREPARATIONS FOR THE KASIPUL KABONDO BY-ELECTION

*The Speaker to the National Assembly gave Notice of the vacant seat for the Kasipul Kabondo Constituency on 12<sup>th</sup> January 2006. The Notice was gazetted on 20<sup>th</sup> January 2006. Upon the issuance of the writs by the Speaker of the National Assembly and in exercise of the powers conferred to it by Section 42A of the Constitution and Section 13 of the National Assembly and Presidential Elections Act (Cap 7), the Electoral Commission of Kenya (ECK) on 17<sup>th</sup> January 2006, gave Notice of the intended by-election. According to the Notice, which was gazetted on 20<sup>th</sup> January 2006, the by-election date was set as 1<sup>st</sup> March 2006.*

*The nomination of candidates by political parties was scheduled to take place on or before 12<sup>th</sup> February 2006, while the nomination or clearance of candidates by the ECK was set to take place on 13<sup>th</sup> and 14<sup>th</sup> February 2006. In accordance with Section 3 of Cap 7 and Regulations 3(1) of the Presidential and Parliamentary Election Regulations, the ECK appointed Mr. Simon Wambura as the Returning Officer (RO), Mr. Dixon Obel Otondo as the Deputy Returning Officer (DRO) and Mr. Gideon Mogaka as the Assistant Returning Officer (ARO) and gazetted the same on 20<sup>th</sup> January, 2006.*

*The ECK also advertised the positions of Presiding Officers (POs), Deputy Presiding Officers (DPOs) and Polling Clerks and organised for their short listing and recruitment. A total of 97 POs were recruited out of which 24 were females while 73 were males. A total of 108 DPOs were also recruited, out of which 41 were females while 67 were males.*

*Out of the total number of recruited POs and DPOs, 16 failed to report for registration on the appointed day. The RO replaced them immediately. The replacement was however done in an adhoc manner, without following the recruitment procedures. This prompted an outcry from those present that the entire recruitment process was marred with corruption, favouritism, and tribalism. IED did not, however, did not observe any evidence to confirm these allegations. We none-the-less, observed that there was a serious gender imbalance in the number of recruited POs and DPOs. Male recruits far outnumbered the female recruits in the ratio of 65.6% and 34.4% respectively. The skewed gender representation in the total number of recruited POs and DPOs is shown in the chart below:*

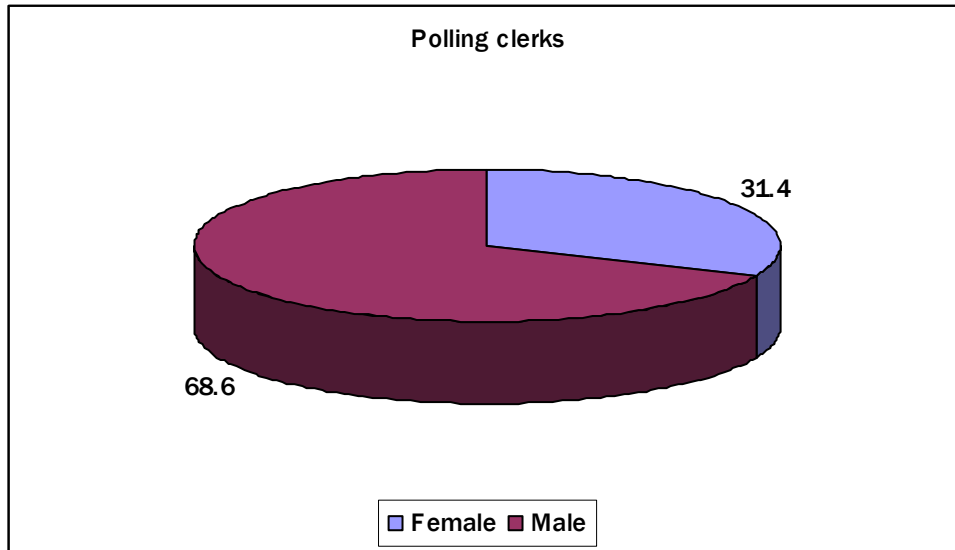


*Chart 1a: Comparison of the Presiding and Deputy Presiding Officers by gender*

*The POs and DPOs were trained for three consecutive days at Agoro Sare High School hall by the RO and the DRO. Commissioner James R. Njenga officially opened the training, which took place between 22nd and 24th February 2006. Commissioner Njenga in his speech emphasised the need for the electoral officials to handle their work in a professional manner. In addition, he reiterated the need for the officials to internalise ECK vision and use it as a pillar in their work<sup>10</sup>.*

*On the last day of the training for the POs and DPOs, which was 24th February 2006, a list of recruited Polling Clerks was posted at a notice board at the Returning Officer's office in Agoro Sare High School. A total of 432 individuals were recruited as Polling Clerks. Out of the total number, 126 were females while 306 were males. The recruited Polling Clerks were required to report for registration the following day. They were trained for two days from 26<sup>th</sup> to 27<sup>th</sup> February 2006. Four appointed POs conducted the training. Like in the case of the POs and DPOs, we observed a gender imbalance in the recruitment of the Polling Clerks. Males were over-represented while females were under-represented. The male to female ratio was observed at 68.6% to 31.4% respectively. This is represented in the chart below:*

<sup>10</sup> ECK's vision 'to see evolution of a democratic Kenya in which every citizen has an equal opportunity to participate in choosing the government as the pillar to their work'



*Chart 1b: Composition of the recruited Polling Clerks by gender*

*In addition, 194 security officers were recruited for the by-election. The recruited officers attended half day training on 25<sup>th</sup> February 2006. The Vice Chairperson, Commissioner Gabriel Mukele emphasised the need for impartiality and accuracy when handling election matters, while closing the training session.*

*Immediately after the announcement of the by-election date, IED recruited, trained and deployed three Constituency Monitors to observe and provide IED with regular reports and updates on major developments, electoral environment and campaigns in the Constituency in the period leading to the polling day. In addition, the Constituency Monitors assisted IED to recruit, train and coordinate the deployment of 108 Poll Watchers to observe the 108 polling stations/streams in the Constituency. IED personnel, with the assistance of the monitors, conducted training for the Poll Watchers on 27<sup>th</sup> February 2006 in Oyugis town. The training covered a variety of topics, including the electoral laws, the purpose of the observation and what to look out for during the observation, and the duties and responsibilities of a Poll Watcher during the observation exercise. It was emphasised during the training that Poll Watchers are to observe events and activities related to the by-election, and are not expected to interfere with the process.*

*As part of the preparations for the by-election, IED staff undertook a field trip to Kasipul Kabondo to capture accurately the electoral and administrative boundaries and all the designated polling stations using the Global Positioning System (GPS) equipment. The coordinate points were accurately overlaid and built into IED's Geographic Information System (GIS) database. As a result, an accurate map for Kasipul Kabondo Constituency with all the necessary and relevant electoral and*

*demographic, socio-political and economic information was made available for use by observers and others stakeholders/collaborators interested in the by-election.*

## **CHAPTER 4: THE NOMINATIONS FOR KASIPUL KABONDO BY-ELECTION**

### **4.1 Political party nominations**

#### **4.1.2 LDP nominations**

*The LDP party nominations took place on Tuesday 7<sup>th</sup> February 2006. The nominations initially attracted 15 aspirants, but 5 were dropped after interviews which LDP conducted for all the aspirants. It was conducted using the secret ballot method and the copies of the ECK register of voters for the Constituency. ECK designated polling stations were used for the exercise. Ten (10) candidates competed for the LDP ticket. Initially, there was confusion over the mode and rules to be followed during the nominations. It was also not clear whether the supporters of the contesting candidates would be allowed to use the party membership cards or the national ID and national voters' cards in the nominations. Respective candidates argued that the use of party membership cards would favour some of them whose supporters they alleged had bought and kept the cards in readiness for the poll to be conducted. This matter was sorted during a meeting held at Nyadendi hotel on 14<sup>th</sup> February 2006 between LDP aspirants, party officials where it was resolved that for the exercise to be free, and fair only original voters and ID cards were to be used.*

*The party headquarters also reduced the number of polling stations from the gazetted 97 to only 53 allegedly to cut down on costs. Thus, there was low voter turn out during LDP nomination exercise, which was contributed to by among other factors the merging of polling stations and confusion as to whether voters would use party membership cards or national ID cards and national voters' cards.*

*During the nominations, polling stations opened late amid claims that there was vote buying and violence. In some polling stations, supporters of various candidates boycotted the nomination exercise claiming that the merger of some polling stations was meant to favour a particular candidate. In addition, some voters were unable to cast their ballots because voters' registers had not been forwarded to the right polling stations. Violence was also observed during the nomination exercise especially at Ringa polling station where supporters of Eng. Tom Okoko fought with those of Paddy Abenda. The former were accused by the latter of bribing voters. In the ensuing violence, two of Paddy Abenda's bodyguards were seriously injured and one left unconscious. Sporadic violence was also observed in Nyahera and Palla polling stations and during the tallying of results at Agoro Sare.*

Results of the party nominations indicated that Mr. Paddy Abenda was the winner. However, the results were nullified by the party on the claim that the nomination exercise had been marred with electoral irregularities and malpractices. Repeat party nominations were held on 12<sup>th</sup> February 2006. Mr. Paddy Abenda again emerged the winner and was declared the LDP candidate for the by-election. KANU as a party did not field a candidate of its own but rather declared publicly that it would support the LDP candidate in the spirit of ODM coalition. The results of the repeat LDP nomination were as shown in the table below:

*Table 4: Repeat LDP Nomination Results*

<i>Candidate's Name</i>	<i>Votes Garnered</i>
<i>Mr. Paddy Abenda</i>	<i>7,988</i>
<i>Eng. Tom Okoko</i>	<i>3,404</i>
<i>Mr. Oloo Otula</i>	<i>2,823</i>
<i>Mr. Philip Owidi</i>	<i>2,109</i>
<i>Mr. Oyugi Magwanga</i>	<i>2100</i>
<i>Dr. Otieno Mbare</i>	<i>329</i>
<i>Mr. Sam Otiende</i>	<i>221</i>
<i>Mr. Kenneth Kambona</i>	<i>183</i>
<i>Ms. Mary Ouma</i>	<i>63</i>

#### *4.1.3 NARC nominations*

NARC nominations were conducted on Sunday 12<sup>th</sup> February 2006. Unlike LDP, NARC did not conduct competitive nominations. Rather, the party endorsed Mr. Gerald Otieno K'Opiyo and presented him with a certificate of nomination. It is instructive to note that Mr. K'Opiyo is the Deputy Secretary General of FORD Kenya, one of the constituent member parties of NARC. Mr. K'Opiyo was once the area MP.

#### *4.1.4 Labour Party of Kenya (LPK) nominations*

The party nominated a 26-year-old Nabashon Odhiambo Ng'wena as its candidate to contest for the Kasipul Kabondo Parliamentary seat. The nomination was also not competitive but rather an endorsement of Mr. Ng'wena as the party's torchbearer.

#### 4.1.5 Democratic Party of Kenya (DP) nominations

*The DP as a party nominated Mr. Wilson Onyango Owalo Owarwo as its candidate to contest for the seat. Like NARC and Labour Party of Kenya, DP did not conduct competitive party nominations but rather endorsed Mr. Onyango Owalo Owarwo as the sole candidate.*

#### 4.2 The ECK nominations

*The nominations or clearance of candidates by the ECK took place on 13<sup>th</sup> and 14<sup>th</sup> February 2006 at Agoro Sare High School. Three candidates presented their papers on 13<sup>th</sup> February 2006 and were duly cleared by ECK. These were Mr. Paddy Abenda of LDP, Mr. Otieno K'Opiyo of NARC and Mr. Nabashon Odhiambo Ng'wena of Labour Party. On 14<sup>th</sup> February 2006, one candidate, Mr. Wilson Onyango Owalo Owarwo of DP presented his paper and was duly declared by ECK.*

*Therefore, a total of 4 candidates were cleared/nominated by ECK to contest in the by-election. Official campaigns started after the close of the nomination exercise by ECK.*

##### 4.2.1 Observations

*The political parties, which participated in the by-election, conducted their nominations within the period allocated by the ECK. Similarly, the ECK conducted its nomination and clearance of the party candidates as required by law and within the period it had allocated. In our observation, the ECK conducted its nominations professionally and in accordance with the laid down procedures. Indeed, this is the reason why ECK barred Mr. Herbert Ojwang', a candidate who had been nominated by the Progressive Peoples Party from taking part in the by-election on the ground that the party had not registered with the ECK as required by law.*

*On the other hand, the nominations by political parties, was in our observation conducted unprofessionally and undemocratically. For example, the LDP nomination exercise was marred with many irregularities. Polling stations were merged under circumstances, which did not accord with fairness and transparency. Therefore, out of 97 designated polling stations in the constituency, only 53 were used by LDP for the nomination exercise. Furthermore, the party did not update its registers even after the purported mergers, with the result that names of many voters were missing from the registers at the merged stations. The party also failed to adhere to proper election and voting procedures, with some polling stations opening as late as 4 pm while in others, the counting rules were flouted. In addition, those who were in charge of the nomination process were not trained and therefore a capacity kept making mistakes.*

*The voting rooms were also not arranged in order and secrecy of the ballot was not a priority. In some polling stations, some voters were issued with two ballot papers. Dipping of fingers in ink after voting was also not a priority. Overall LDP had to conduct its nominations twice after nullifying the first results because of serious irregularities and malpractices.*

*Nonetheless, LDP should be commended for conducting its nominations since this is a process, which enhances the growth of internal democracy within the party. In particular, IED commends LDP for organizing joint rallies for its aspirants. Two joint rallies were organized on 3<sup>rd</sup> February 2006 at Kadongo grounds and on 4<sup>th</sup> February 2006 at Oyugis town (Raila grounds). The joint rallies enabled all the aspirants to share a joint platform and to challenge each other on issues. This gave the electorate a good opportunity to weigh each aspirant based on real issues.*

*Other than LDP, the other political parties did not conduct competitive nominations. Instead, they simply handpicked their candidates and issued them with nomination certificates. In our observation, this practice inhibits the growth of democracy and should not be encouraged. Political parties must endeavour to strengthen their internal democracy by deliberately creating room for competition and involving party members in their internal decision making processes.*

*Finally, there was minimal involvement of women in the political parties' nominations, as aspirants and candidates. Only one female aspirant participated in the LDP nomination process. Other than LDP, the other political parties did not seem to encourage the participation of female aspirants or candidates. Indeed, after the LDP female aspirant had lost in the nomination, the by-election became an entire male affair. In our observation, political parties must begin to seriously involve women in their affairs and create an enabling environment for women to participate in an equal footing with men, in the electoral process. Political parties must begin to mainstream gender in their internal structures and democratic processes, including elections.*

## **PROFILES OF CANDIDATES.**

### *Cornel Paddy Abenda*

*Mr. Paddy Abenda was the LDP candidate in the by-election. He was born 53 years ago and is not a new comer in the politics in the constituency. He previously served as the Secretary for Information and Publicity for the National Development Party of Kenya (NDP), which was led by Hon Raila Odinga before its merger with KANU in 2001. In 2002, Mr Abenda was one of the candidates who sought nomination for the constituency seat on NARC ticket. He lost to the late Hon. Peter Owidi in the nomination and decamped to the Social Democratic Party (SDP). He eventually lost the seat to the late Hon. Owidi in the 2002 general elections.*

*Mr. Abenda is a graduate of Public Relations from Texas University in the United States. He is also a marketing consultant and once served as the Managing Director of Rivatex Kenya in 1991. He is credited with several development projects in Kasipul Kabondo constituency.*

*Gerald Otieno K'Opiyo*

*Mr. K'Opiyo was the NARC candidate for the by-election. He was born 47 years ago and is not a newcomer in politics of the constituency. He once served as the area MP between 1992 and 1997. He has since 1991 remained steadfast in FORD Kenya. In fact, his nomination to vie in the by-election on NARC ticket was through FORD Kenya, which is one of the constituent political parties in NARC. During the 2002 general elections, Mr. K'Opiyo participated in the NARC nominations but lost. He is a journalist by profession and a businessperson*

*Wilson Onyango Owarwo*

*Mr. Owarwo was the DP candidate in the by-election. He was born 39 years ago. This was the first time that he was trying his hand in politics. He is a trained development specialist. Mr. Owarwo was one of the aspirants in the LDP nomination but was disqualified by the LDP nomination board after the interviews of aspirants. As a result, he defected to DP for nomination.*

*Nahashon Odhiambo Ng'wena*

*Mr. Ng'wena was the Labour Party of Kenya candidate for the by-election. He was born 26 years ago and was therefore the youngest candidate in the Kasipul Kabondo by-election. He holds a Bachelor of Education from Maseno University. He graduated recently and is still unemployed.*

## **CHAPTER 5: PROFILES OF CANDIDATES.**

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## CHAPTER 6: THE CAMPAIGNS FOR THE BY-ELECTION

*This section of the report contains an assessment of the entire campaigns during the by-election. The assessment has been structured in the context of the methods of campaign adopted by the various political parties and candidates, the emergent campaign issues including violence and other electoral irregularities and malpractices. The objective is to highlight the campaign methodology and the electoral irregularities and malpractices that were observed during the campaigns for the by-election.*

*Political parties and candidates are required to conduct political campaigns in order to sell their agenda, platform, and policies to the electorate. The law stipulates that campaigns for Presidential and Parliamentary elections shall be conducted for at least 21 days before the polling day. The campaign period begins officially after the nomination of candidates by ECK. However, campaigns in a less technical sense and in the “unofficial” sense begin much earlier when prospective candidates start to make their intentions to vie known and they seek nominations by respective political parties. This was the case in Kasipul Kabondo Constituency as the campaigns started soon after the death of the sitting MP, although they gained momentum after the nomination of candidates by the ECK.*

*The campaign platform and agenda of the candidates involved promises of better delivery of services and facilitation of development in the constituency. In particular, all the candidates made promises to improve health facilities, infrastructure, develop schools, ensure proper use of the CDF funds, revive old and establish new potato and pineapple factories to process these products, and upgrade the market centres. Apart from the development and service delivery agenda, issue of clanism. In fact, the campaigns pitted the bigger Kasipul clan against the smaller Kabondo clan. Those who belong to the bigger Kasipul clan have always looked down upon those from the smaller Kabondo clan. Furthermore, those from the Kabondo clan have always been regarded by their Kasipul counterparts as outsiders. This featured prominently in the campaigns, with many candidates urging the electorate not to vote for any outsider but for one of their own. In other words, voters were being urged to only vote for candidates from the Kasipul clan.*

*However, and according to IED observers, the constituents were hoping for a leader who would steer them up economically by helping to create to an environment that could spur and sustain economic growth and empowerment for the people especially women, the youth, and the aged. In particular, the constituents were hoping to get a leader who would help them in building industries that would help them to process their farm produce, mainly potatoes and pineapples.*

### 6.1 Campaign methods

*Most of the candidates adopted public rallies as the key method of campaigning. The rallies were held in areas such as market places, village centres, and other public grounds in the Constituency. In terms of numbers, LDP held the highest number of rallies, followed by NARC. The rallies organised by LDP often attracted big crowds of supporters as compared to those organised by the other parties. In addition to the public rallies, the candidates used vehicles mounted with loudspeakers and music systems to criss-cross the constituency during the campaigns. This method of campaigning using vehicles mounted with loud speakers and music was adopted by LDP and NARC. Door to door method of campaign was also used by the candidates. According to IED observers, the DP and LPK candidates adopted this method mostly as compared to the other candidates. IED observers also indicated that the LPK candidate conducted his campaign on foot and sometimes relying on boda boda transport since he did not have enough money and backing from the party.*

*In addition, use of political propaganda adopted in the campaigns particularly by the NARC and LDP candidates. Since the by-election was happening at a time when LDP had pulled out of NARC, it was perceived as a test of the political weight of Hon. Raila Odinga vis-à-vis President Kibaki. Political propaganda therefore featured prominently in the campaigns by LDP and NARC candidates.*

## **6.2 NARC campaigns**

*Mr. Alex Mureithi, the party's elections Coordinator led the NARC campaign team. NARC relied on Mr. K'Opiyo's political experience and organisational skills in its campaign. The NARC candidate Mr. Otieno K'Opiyo launched his campaign officially on Saturday 18<sup>th</sup> February 2006 in Oyugis town. He drove through Oyugis Township in a convoy of vehicles and addressed several gatherings. In his address to the electorate, Mr. K'Opiyo is reported by IED observers to have urged the people to support him as an individual and not necessarily his party. He also reported to have urged the electorate to consider real issues in the campaigns and assess the candidates as individuals and what they stood for as opposed to the party, which had sponsored them. He also reported to have promised to work with LDP if he was elected. However, this was the last major rally he held in the Constituency as he later took a low profile and concentrated his campaigns in his home area within the Kasipul part of the Constituency.*

*On 25<sup>th</sup> February 2006, the NARC candidate had a low-key campaign rally at Mitri Primary school. At this rally, the candidate is reported to have faced a fierce reaction from the crowd that had gathered. According to IED observers, one of the speakers at the rally confronted him on the claim that he had failed to initiate any development project during his previous tenure as MP for the area and challenged him on the failure to deliver on the people's expectations if elected. On his part, the candidate promised to complete the projects that had been initiated by the late area MP.*

### 6.3 LDP campaigns

*Initially there were media reports<sup>11</sup> on disagreement in LDP's campaign team, which the party denied. LDP formed a campaign committee and released a timetable of rallies, one which was to be addressed by Langata MP Hon. Raila Odinga and other MP's allied to the ODM. LDP then started campaigning for its candidate under the steerage of a campaign committee and campaign timetable. The party held several rallies in the constituency using vehicles mounted with public address systems.*

*One of the key rallies for the party occurred on 22<sup>nd</sup> February 2006. On this date, the party held a series of rallies in the constituency, which were addressed by among other, Hon. Raila Odinga, Hon. Adhu Awiti, MP. Karachuony constituency, Hon. Ken Nyagudi, MP. Kisumu Town West constituency Hon. Ayiecho Olweny, MP. Muboroni constituency, Hon. Erick Nyamunga MP. Nyando constituency, Hon. Ochieng' Mbeo, MP East African Legislative Assembly and Mr. Riaga Ogalo, the chairperson of the Luo Council of Elders. Those who addressed the rallies urged the constituents to reject the other candidates, especially the NARC candidate and vote in the LDP candidate. At this rally, as in many others that followed, infamous MOU entered into by NARC partners prior to the 2002 general elections featured prominently. They also equated the by-election to a battle between Hon. Raila Odinga and President Kibaki and urged the constituents not to allow the President Kibaki to beat Hon. Raila at home. IED observers noted two Councillors namely Councillor Odarwo and Councillor Osiemo, who told the people that NARC was a government sponsored party aimed at finishing Hon. Raila and therefore the people had a moral duty not to vote for NARC.*

*The above issues were revisited when Hon. Raila Odinga visited the Constituency for the second time 26<sup>th</sup> February 2006 to campaign for the LDP candidate. Hon Raila Odinga was accompanied by Hon. Najib Balala, MP Mvita constituency, Hon. Ochilo Ayako, MP Rongo constituency, Hon. Peter Odoyo, MP, Nyakach constituency, Hon. Ochieng' Mbeo, MP. East African Assembly, and Mr. Riaga Ogalo, the chairperson of the Luo Council of Elders. Speakers at this rally are said to have claimed that the NARC candidate had been sent by the NARC government to test Hon. Raila's strength in Kasipul Kabondo Constituency. They are also reported to have stated that the by-election was a test for LDP as this was the first candidate the party was fielding on its own rather than through NARC. Accordingly, they urged the voters not to disappoint the party and Hon. Raila in particular.*

### 6.4 DP campaigns

*The DP candidate used the door-to door method to campaign. According to IED observers, he held one rally, which was poorly attended and not well organised. It*

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<sup>11</sup> Daily Nation, 20<sup>th</sup> Feb, 2006

*also appeared that he did not receive any support from the party officials and leaders in his campaigns. Indeed, none of the DP officials or leaders visited the Constituency to support his campaign.*

### *6.5 LPK campaigns*

*The Labour Party of Kenya candidate conducted his campaign mainly on foot and sometimes with the use of boda boda transport. According to IED observers, this candidate did not hold any rally and had no support on the ground from his party. None of the party officials or leaders appeared in the Constituency to support his campaign.*

## *6.6 EMERGING ISSUES DURING THE CAMPAIGNS*

### *6.6.1 Turn out*

*Women and the youth formed the majority of the audience during the campaigns. In terms of political parties, the LDP campaign rallies were well attended and positively responded to. Rallies for the other parties, were not well attended and were approached with hostility. It was also observed that response and attendance at political rallies was motivated by expectations of handouts from the candidates and their campaign agents. Indeed, there were allegations that in most of the rallies, the people demanded handouts from the candidates before being addressed.*

### *6.6.2 Voter bribery and inducement*

*Cases of vote buying and bribery and allegations of rigging were reported during the campaigns for the by-election. These were especially common during the campaigns for the party nominations. In particular, IED observers singled out the campaigns for the LDP nominations as having been marred with cases of voter bribery and inducement. According to IED observers, the electorate demanded money from the aspirants as they campaigned and in some instances, forced the aspirants to give them handouts before addressing them. In this regard, the electorate coined a terminology in local Luo language known as “gonywa”. The terminology literally means, “release or free us” and it implied giving of handouts as a precondition for voting. In many instances, the electorate were not interested in listening to the campaign speeches but only waited for handouts. IED observers reported that the word “gonywa” became the people’s language during the LDP party nominations campaign.*

*Although IED observers did not witness money-exchanging hands during the campaigns, the conduct of the aspirants and the voters suggested very strongly that voter bribery occurred during the campaign for the LDP nomination. In addition, it was observed that various aspirants for the LDP nominations organised transport to ferry voters, especially women to the polling centres and back to their homes.*

*According to IED observers, two aspirants, namely; Mr. Paddy Abenda and Engineer Tom Okoko were involved in transportation of voters to and from polling stations. Although this could indicate a positive civic responsibility gesture of ensuring that people vote, it none-the-less amounts to inducement or bribery of voters. In addition, the two aspirants allegedly gave out money and sugar to the electorate as they campaigned at Oyugis Market and Ombek Market respectively on 2<sup>nd</sup> February 2006.*

*Allegations of voter bribery were also common during the campaign after the party nominations. IED observers reported that there were allegations that the NARC candidate Mr. Otieno K'Opiyo while campaigning on 25<sup>th</sup> February 2006, gave out money to schools in the constituency. For instance, it was alleged that during his campaign at Muthui Primary School on this day, he gave out Kenya Shillings 10,000 for a secondary school, Kenya Shillings 5,000 to the local SDA church, Kenya Shillings 5,000 for a primary school, and Kenya Shillings 6,000 for different groups to share. However, there is no hard evidence to prove these allegations.*

### *6.6.3 Incidence of election violence during the campaigns*

*Sporadic incidences of violence were witnessed during the campaigns and in particular during parties' nomination period. For instance, during LDP nominations, a group of drunken youths attempted to disrupt the voting process at Agoro Sare Primary School but armed police officers dispersed them. Violence was also witnessed during the counting of votes at Agoro Sare after the LDP nomination exercise. In this case, violence erupted between the supporters of Engineer Tom Okoko and those of Mr. Paddy Abenda. The latter's supporters suspected that the agents of the former were carrying weapons. Indeed, upon search, one of the youth who was a suspected to be a supporter of Engineer Okoko was found with a machete and arrested. At some point as the counting was going on, supporters of the two aspirants fought each other, forcing people to flee from the counting hall. Order was however, restored by the police who were present.*

*Earlier on as the aspirants campaigned for the LDP nomination, violence was observed. In one incident, which occurred on 5<sup>th</sup> February 2006, the supporters of Engineer Okoko met with those of Mr. Peter Owidi along the Nyahera-Kotieno highway and fought each other. In the ensuing clash, several vehicles were damaged and several people were injured. In yet another incident, which occurred on the LDP nomination day at Opanga Primary School, violence erupted when the voters became agitated because of the delay in starting the voting process. The police were quickly called in to restore peace and order.*

## CHAPTER 7: OBSERVATION OF THE POLLING DAY

### 7.1 Provision and Distribution of Election Materials and Equipment.

*ECK distributed the non-strategic materials on 28<sup>th</sup> February 2006. The exercise was conducted at Agoro Sare High School. The Returning Officer, his deputy and other ECK officials supervised the distribution exercise. ECK hired vehicles for transportation of the non-strategic materials from the distribution centre to every polling centre. Each polling station had a vehicle assigned to it. The provision of vehicles ensured that the non-strategic materials, which included polling booths, pressure lamps, writing materials, pens, sisal twines, election posters etc were transported to various polling stations a day before the polling day.*

### 7.2 Opening of Polling Stations

*Polling took place on 1<sup>st</sup> March 2006. Most of the polling stations were opened within the stipulated time i.e. 6 am but others (27.8%) opened late due to the bad weather conditions late arrival of ECK officials and late arrangement of the polling stations. The most affected polling stations included Nyakia Primary School, Nyang'uela Primary School, Ondiko Primary School, Oyugis Primary School, Nyagowa Primary School, Nyambare Primary School and Orera Primary School. IED observers reported in all the polling stations, the ECK officials opened the ballot boxes and demonstrated to party agents and observers that the boxes were empty. In addition, IED observers reported that the ballot boxes were correctly sealed before voting started. We also observed that correct ballot papers were dispatched to all the polling centres. All the relevant election materials were also available in all the polling stations. These included voters' register, indelible ink, parliamentary ballot box, and ECK official stamp among others.*

### 7.3 Observation of voting

#### 7.3.1 Incidents of violence, intimidation and voter bribery and other malpractices

*According to the reports and checklist filed by IED observers, the by-election was generally free from violence, with 92.6% of polling centres not reporting any violence. The few cases of violence (5.6%) consisted of incidents of stone throwing and fighting but the police contained these. The incidents of violence occurred at Ang'ino, Opanga and Ringa Primary Schools polling stations and were allegedly perpetrated by NARC supporters. In addition, IED observers did not record any cases of voter intimidation. There were no reported cases of voters who were stopped from voting because of violence or intimidation. Instances of bribery were generally not observed, save for 1.9% cases where IED observers observed voters being given bribes. Incidents of campaigning near polling stations on the polling day were minimal. IED*

observers reported that such incidents only occurred in 2.8% of all the polling stations.

### 7.3.2 Voters who were denied the right to vote

Cases of voters being turned away and denied the opportunity to vote for various reasons were observed. The reasons why the Election Officials refused some voters the right to vote included lack of national identity card, lack of voter's card, fake identification documents, voter's name missing from register of voters, and voters disturbing the polling activities. Lack of National identity card accounted for most of the cases where the officials turned voters away. This accounted for more than half (or 52.1%) of all voters who were turned away. Missing names in the register accounted for 21.0% of those turned away, while lack of voter's card and possession of fake documents accounted for 13.4% and 13.5% respectively of those turned away. The chart below shows the cases of those turned away by reason and percentage.

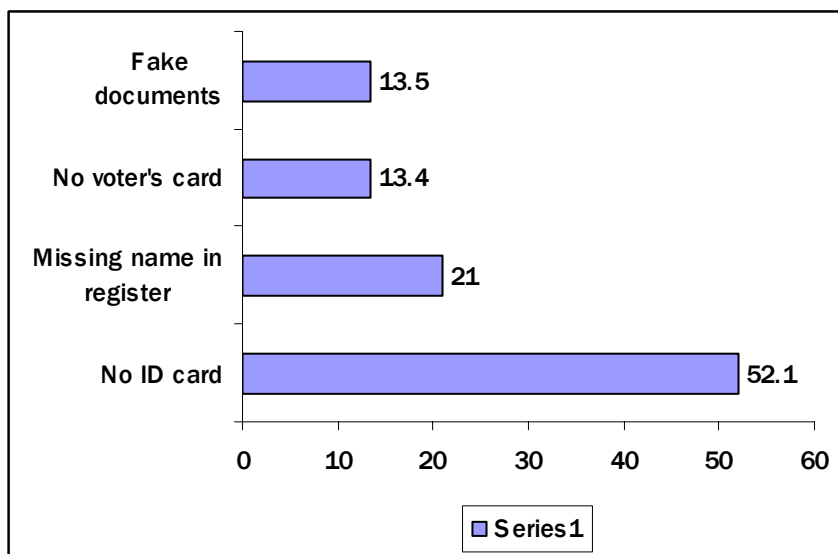


Chart 2: Percentage of voters denied right to vote and reasons

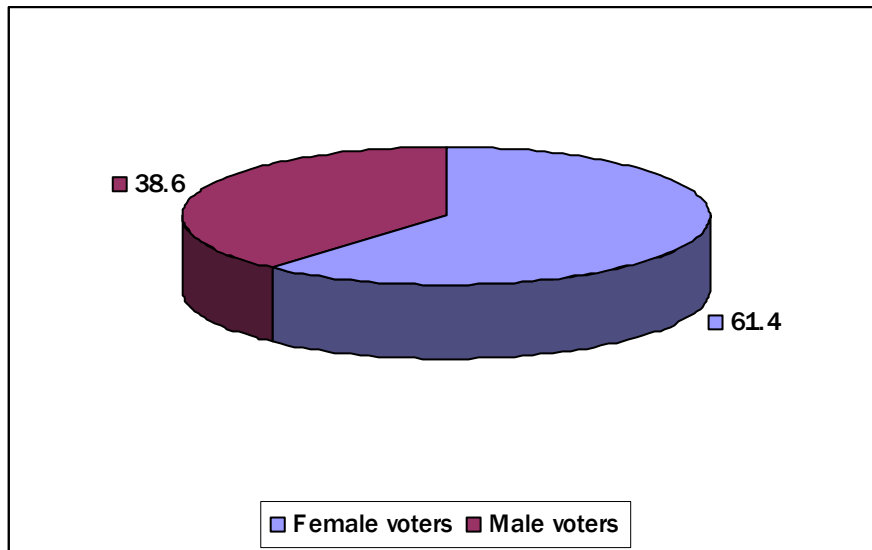
### 7.3.3 Gender composition of those denied the right to vote

Based on the total checklist from our poll watchers a slightly higher percentage of male voters (54.5%) were turned away and therefore denied the right to vote as compared to their female counterparts (45.5%). Lack of the national identity cards accounted for most of the cases where voters were turned away and denied the right to vote. In terms of gender, it accounted 54.9% of the total male voters and 59.1% of the total female voters who were turned away. IED observers did not witness any discrimination between male and female voters with respect to being allowed to vote when, in fact, they should have been turned away. From the analysis out of those

*who were allowed to vote, yet they should have been turned away, male voters accounted for 46.3% while female voters accounted for 53.7%.*

#### *7.3.4 Assisted voters*

*According to the reports and checklists filed by IED observers, female voters comprised a bigger proportion of those who were assisted to vote. The female voters who were assisted to vote accounted for 61.4% of all those who were assisted as compared to male voters who accounted for 38.6%. This is shown in the chart below:*



*Chart 3: Assisted voting by gender*

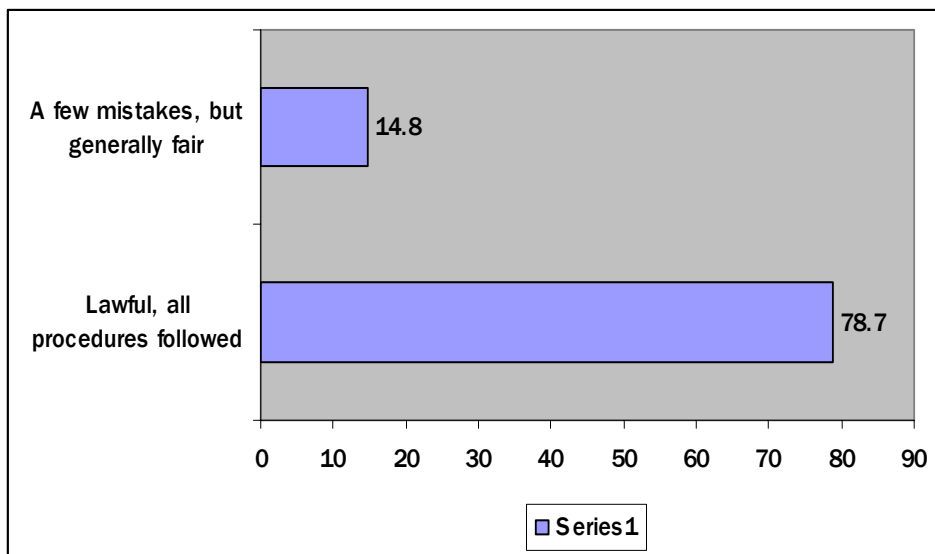
*It was also observed that voters were mainly assisted by elections officials than by a person of their choice. Those assisted to vote by the election officials accounted for 88.4% of the assisted voters while those who were assisted by persons of their choice accounted for 11.6%.*

#### *7.3.5 Observance of the polling procedures*

*Reports and checklists from IED observers indicate that all the voting procedures were followed according to the electoral laws. The IED observers also reported that the Election Officials were well versed with their duties and were very professional and cooperative with the observers. All accredited persons from the political parties, the media, and civil society were allowed to observe the elections provided they had accreditation papers. In whole, the polling was conducted in a free and transparent manner.*

*Procedures for closing of polling were also generally observed. Only a small number of voters (16 females, 14 males) were allowed to vote after the polling stations had closed. Overall assessment of the voting process, including close of polling indicates*

*that the exercise was conducted lawfully and professionally, with all procedures being followed (78.7%). It also indicates that the polling exercise was generally fair, though a few mistakes occurred (14.8%). This is shown in the chart below:*



*Chart 4: Overall assessment and comments on voting procedures*

#### *7.4 Observation of counting procedures*

*According to the reports and checklists from IED observers, counting procedures were adhered by the Election Officials in majority of the polling stations. For example, majority of the polling stations (83.5%) started counting within thirty (30) minutes after the close of polling. Overall, the counting process was assessed to have been conducted freely, fairly and transparently in 99.1% of the polling stations. In a few polling stations (3.7%) there were attempts to disrupt and interfere with the counting process but the Election Officials and the police thwarted these. Recounts were conducted in a few of the polling stations (5.6%) although the results changed in only 1.9% of them. Agents of candidates and voters generally accepted the results.*

#### *7.5 Tallying and final announcement of the results*

*The tallying centre for the by-election was at Agoro Sare Secondary School hall in Oyugis. Results from various polling stations began arriving at the tallying centre by 8.30 p.m. Those present during the tallying of the results in the by-election were among others the ECK Commissioners, the RO and his deputy, local and international observers, agents, party officials, candidates and the press. Supporters of the various candidates and other people remained outside the tallying hall.*

*There were no incidents of violence at the tallying centre and activities were conducted smoothly and peacefully. Security at the tallying centre was tight. However and due to delays in transmitting the results from some of the polling*

stations in the constituency, the tallying exercise proceeded up to 4.30 am when tallying was completed and the results computed, finalised and officially announced. It is noteworthy that parallel with the Parliamentary by-election, there was a by-election for Obisa Civic Ward. Therefore, the results, which the Returning Officer announced, included the results for the civic ward by-election. In both by-elections, LDP candidates emerged the winners. In the case of the Obisa civic ward, Mr. Isaiab Onuong'a of LDP won with 1,132 votes, while in the case of the Parliamentary by-election, Mr. Cornel Paddy Ahenda of LDP won with 18,202 votes. The final results by candidates and by political parties, for the civic ward and Parliamentary by-elections are shown in the tables below

*Obisa civic ward by-election results*

<i>Party</i>	<i>Candidate</i>	<i>Total votes</i>
<i>LDP</i>	<i>Isaiab Onuong'a</i>	<i>1,132</i>
<i>KANU</i>	<i>Mr. Arogo</i>	<i>613</i>

*Kasipul Kabondo Parliamentary by-election results*

<i>Party</i>	<i>Candidate</i>	<i>Total votes</i>
<i>LDP</i>	<i>Cornel Paddy Ahenda</i>	<i>18,202</i>
<i>NARC</i>	<i>Gerald Otieno K'Opiyo</i>	<i>1,912</i>
<i>DP</i>	<i>Winston Owarwo</i>	<i>108</i>
<i>LPK</i>	<i>Nabashon Ng'wena</i>	<i>270</i>
<i>Total registered voters</i>		<i>63,523</i>
<i>Total votes cast</i>		<i>20,678</i>
<i>Total rejected votes</i>		<i>171</i>
<i>Percentage voter turnout</i>		<i>32.45%</i>

## CHAPTER 8: ASSESSMENT OF THE BY-ELECTION.

### 8.1 Performance of the ECK

*The performance of the ECK in the management and conduct of the by-election was generally professional. In our observation the Election Officials were generally well trained and carried out their duties professionally. The Election Officials at the polling stations were very cooperative and ready to assist voters and observers. In all the polling stations, election materials were available and adequate. In addition, the polling stations were generally properly set. The Returning Officer and his deputy were also very professional and cooperative. They managed and controlled the by-election professionally and maintained a proper coordination with all the POs and DPOs. Similarly, the ECK Commissioners were very professional and cooperative in their work.*

*However, there were a few shortcomings, which were observed, which related to late opening of some polling stations. As already indicated, 27.8% of the polling stations opened late due to the bad weather conditions, late arrival of ECK officials and late arrangement of the polling stations. In our view, the late opening of some of the polling stations could have been avoided. First, it was common knowledge that it was the rainy season in the area. Therefore, ECK could have factored in bad weather and put in place measures to deal with it. Secondly, there is no reason at all why ECK officials should arrive late at polling stations. In practice all ECK officials (POs, DPOs, clerks and security personnel) are required to spend the night at the polling station on the even of the polling day. Lateness could be avoided if this practice is fully institutionalised and adhered to by all election officials.*

*There were allegations of voter bribery, voter influence, and inducement during the pre-nomination and post nomination campaigns. There were also a few cases of violence, especially during the campaigns. In our view, ECK should always be proactive and should not sit back and wait for formal complaints to be lodged with it before taking action. Any allegation of voter bribery, voter influence and inducement and any case of electoral violence should promptly be investigated, and firm and decisive action taken.*

*It would be prudent to note that all the teams agreed that the officials were up to the task assigned and that the whole exercise was conducted in a transparent and professional manner.*

## *8.2 Participation of women in the By-Election (Gender concerns)*

*The participation of women in the by election was below average. First, the low participation of women was evident at the level of ECK recruited election officials. Although ECK has always advocated for gender balance in the recruitment of election officials, a gender imbalance was observed, as most of the official's appointed by ECK to conduct the by-election were males. For example, out of the 97 Presiding Officers recruited, there were only 24 female Presiding Officers, and out of the 107 Deputy Presiding Officers only 24 were females. In addition, out of the 432 Polling Clerks recruited, only 126 were females. Gender imbalance was observed in relation to the aspirants and candidates who participated in the by-election. Only one female aspirant participated in the LDP nomination but failed to make it beyond the party nomination stage. The female aspirant lacked support from even the women voters. Thus, there was no female candidate in the by-election. The constituency has a total of 64,437 registered voters out of which 31,493 (49%) are females while 32,944 (51%) are males. This means that there is need to mobilize more females to register as voters in order to have a gender balanced registered voters.*

## *8.3 Electoral irregularities and malpractices*

### *8.3.1 Electoral violence, coercion and intimidation*

*According to IED observers' reports, there were incidents of electoral violence, coercion and intimidation in the by-election, especially during the campaigns and the polling day. Incidents of violence were observed at Opanga Primary School, Ang'ino Primary School, and Ringa Primary School polling stations involving rowdy youth who were said to be supporters of the NARC candidate. The rowdy youth almost disrupted the voting exercise at these polling stations were it not for the quick intervention by the police. Violence was also observed at Nyahera Primary School polling station where rowdy youth were threw stones and threatened to burn the station. This incident occurred during counting and was only calmed down after police intervention.*

*At Ading'o Primary School polling station, violence and chaos erupted between NARC and LDP supporters. The station is a stronghold of the NARC candidate. The situation became violent and chaotic when supporters of the NARC candidate demanded that the LDP agents should vacate the station. According to IED observers, the polling exercise was almost grounded when the NARC candidate came to the station at 3.00 pm and demanded to know why his supporters were being*

*harassed. The situation was however, calmed down after the intervention of the PO through consultations between with the NARC candidate. The PO also requested the NARC candidate to leave the polling station. Other than on the polling day, violence was also observed during the pre-nomination and post-nomination campaigns. In one incident, which occurred on 5<sup>th</sup> February 2006, the supporters of Engineer Okoko met with those of Mr. Peter Owidi along the Nyahera-Kotieno highway and fought each other. In the ensuing clash, several vehicles were damaged and several people were injured.*

*Although there were few sporadic cases of violence in the by-election, the concern remains as to how the stakeholders in the electoral process, especially the ECK, political parties and the law enforcement agencies of the government can devise practical and effective ways of curbing the menace of electoral violence. This is the challenge, which must be boldly tackled in order to remove violence from the realm of Kenya's electoral process and environment. Otherwise, political and electoral violence will continue to pose a serious threat to the credibility and legitimacy of the electoral process in Kenya.*

#### *8.4 Voter bribery, inducement and undue influence*

*There were accusations and counter accusations of voter bribery and inducement during the pre-nominations and post-nominations campaigns and even during the polling day. According to IED observers, the voters demanded money from the aspirants and candidates as they campaigned and in some instances, forced them to give them handouts before addressing them. At the same time, the aspirants and candidates were reported to have voluntarily given handouts and other forms of inducements to voters. In our view, it is the culture of corruption and being used to handouts that are to blame. In the context of the by-election, a local Luo terminology known as "gonywa" was coined and used to communicate the corrupt intentions. IED observers reported that the word "gonywa" became the people's language especially during the pre-nomination and post nomination campaigns. The LDP party nomination campaigns were singled out as having been notorious for electoral corruption. Aspirants for the LDP nominations also offered free transport ostensibly to facilitate voters, but in reality as a means of inducing them. These were observed mainly in polling stations in Kabondo-Kadongo area, especially Kotienditi polling station. Although IED observers were not able to collect hard evidence on voter bribery, inducement and undue influence, there is no doubt that these vices were perpetrated in the by-election, especially during the campaigns. In our view, all aspirants and candidates, and all the political parties involved in the by-election were in one way or the other contributory to the vices. Further and in our view, it behoves all stakeholders in the electoral process to work towards stamping out electoral corruption. In particular, this begs for the doubling of efforts in the dissemination of civic and voter education.*

## 8.5 Secrecy of the ballot/ Voter Assistance

*It was observed that most voters seeking assistance in order to vote did not enjoy any secrecy. In most of the cases, the Presiding Officers and their deputies did not allow disadvantaged voters to be assisted by a person of their choice instead, they used a method, which compromised the secrecy of the vote. They election officials would call the party agents and the voter would be asked to shout the name of the candidate he/she was voting for. Other than compromising the secrecy of the vote, this method of assisting voters also exposes them to intimidation. It is also away through which voters who have been bribed or compromised indicate their loyalty..*

## 8.6 Performance of political parties

*The performance of the political parties, which participated in the by-election, was below the expected professional standards. First, only one party, LDP conducted competitive party nominations. The rest merely handpicked their candidates and issued them with nomination certificates. This trend inhibits the growth of internal democracy within political parties and denies the party members/voters an opportunity to participate in decision-making process in their party. The LDP nominations were also not conducted professionally and were marred with violence, irregularities and malpractices and had to be repeated. At the level of the campaigns and on the polling day, few sporadic incidents of violence were observed. There were also allegations of electoral corruption. Political parties and their candidates and supporters were the perpetrators.*

*Other than LDP, there was lack of seriousness on the part of the other political parties. For example, NARC, LPK and DP did not bother to post party agents in all the polling stations. LPK and DP had party agents in the polling stations within the home areas of the respective candidates only. These were Katanga, Nyabare, Dol Koderu, Kotieno and Kasimba polling stations. In most of the other polling stations, the agents of the two parties were not present. In some others, the agents of the two parties turned up without proper appointment and identification letters and were therefore sent away by the Election Officials. Similarly, NARC did not post its agents in all the polling stations and in some the party agents were sent away due to lack of proper appointment and identification letters. It was also clear that the agents deployed by the political parties did not have a proper training on their role and responsibilities.*

*Therefore, it is crucial for political parties to begin embracing professionalism and practices and processes that would enhance their internal democracy. Parties must also begin to invest in the strengthening of their capacities, through proper and structured training for the election officials, including party agents.*

## CHAPTER 9: CONCLUSION AND RECOMMENDATIONS

### 9.1 CONCLUSION

*The voter turnout in the by-election was very low. Although this could be justified on the fact that the by-election occurred during rainy and planting season in the constituency, it none-the-less raises the fundamental question of voter apathy. The voter turnout of 32.45% reflected serious voter apathy and lack of a serious democratic culture amongst the constituents. Although the voter turnout was low, the people of Kasipul Kabondo were accorded a fair opportunity to express their free will, which they did through the vote. IED is of the overall view that the by-election was conducted professionally and transparently in accordance with the electoral rules and procedures. Therefore, the by-election in IED's assessment was credible, free and fair.*

### 9.2 RECOMMENDATIONS

*From the observation of the by-election and based on the findings and the conclusion reached above, IED would like to make recommendations as follows:*

#### 9.2.1 Voter turnout

*The voter turnout of 32.45% in the by-election was low and was indicative of serious voter apathy. Therefore, there is a need to educate the electorate on the importance of registering as voters and above all the importance of voting not just during general elections, but also in by-elections. A trend was also observed where voters deliberately waited to be facilitated before they could go to vote. The "gonywa" practice became part of the by-election. Such practices must be discouraged and fought at all costs so that they do not become institutionalised as part of the voters' culture in Kenya. There is a need for ECK and other voter education providers to focus more attention on voter education, with special emphasis on voter registration and voter turnout. Special attention must be given to the youth in order to encourage them not only to register as voters but also to turnout to vote.*

#### 9.2.2 Voter bribery, influence and undue influence

*Voter bribery, inducement, voter influence and undue influence continue to feature in Kenya's electoral process. In the context of Kasipul Kabondo constituency by-election voter bribery, influence and undue influence were observed. In particular, a terminology known as "gonywa" emerged and became part of the vocabulary in the by-election. The police and ECK need to be more vigilant and proactive and should employ concrete deterrent mechanisms against electoral corruption. The arrest and prosecution of the perpetrators of electoral corruption would serve to deter corrupt electoral practices.*

### 9.2.3 Assisted voters

*The POs and DPOs assisted most of the voters who required assistance in order to vote. The method, which these officials adopted to assist the needy voters, clearly compromised the secrecy of the vote. Prior to the 2002 General Elections, new regulations<sup>12</sup> were adopted which allow the voters who need assistance to be assisted by someone of their choice and whom they trust. This was meant to remove the need for the Presiding Officers and their deputies to assist the voters in the presence of party agents, observers and everybody present at the polling station. Put in another way, it was meant to safeguard the secrecy of the vote and to avoid exposing the needy voters to intimidation from election officials, party agents and those present in the polling hall. However, it appears from the by-election that the new regulations have not been fully internalised and operationalised. Therefore, ECK must deliberately focus and emphasize on this at the level of training the election officials and through spot checks during polling to ensure the new regulations are fully internalised and operationalised. The voters also need to be educated on procedures for assisting voters as laid down in the law to enable them understand and appreciate the modalities of the same.*

### 9.2.4 Electoral violence

*Although cases of violence in the by-election were a few and sporadic, ECK and other stakeholders in the electoral process reflect on the problem of electoral violence from a conflict management perspective and find long-term solutions to it. In addition, citizens should foster a culture of political tolerance where every election is seen as a competitive process with rules and procedures, which require to be respected, rather than a war of survival. In addition, ECK and the police must remain vigilant and proactive in dealing with electoral violence rather than remaining reactive. ECK must also stamp its authority effectively in terms of ensuring that political parties and candidates sign, respect and adhere to the electoral code of conduct. The ECK must also scrupulously enforce the electoral code of conduct. Political parties and candidates must also take the responsibility of ensuring that there is no violence during elections. In this regard, they must sign, respect and adhere to the electoral code of conduct. In addition, they must reign in their supporters and restrain them from engaging in electoral violence.*

### 9.2.5 Gender concerns

*Although ECK has increasingly encouraged more women to participate in the electoral process, this practice was not ensured in the by-election. The ECK recruited very few women as election officials as compared to men. In fact, out of the 97 Presiding Officers recruited, there were only 24 female Presiding Officers, and out of*

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<sup>12</sup> Legal Notice No. 172. *The Presidential and Parliamentary Elections (Amendment) Regulations.*

*the 107 Deputy Presiding Officers only 24 were females. In addition, out of the 432 Polling Clerks recruited, only 126 were females. Gender imbalance was also evident at the level of the aspirants and candidates who participated in the by-election. Only one female aspirant participated in the by-election at the level of party nominations. The female aspirant lost in the LDP nomination process. As a result, there was no female candidate in the by-election. In addition, out of a total of 64,437 registered voters only 31,493 (49%) are females while 32,944 (51%) are males.*

*Therefore, there is a need to increase participation women in the electoral process. The ECK should for instance put in place deliberately mechanisms to ensure gender balance in the recruitment of election officials. Other players in the electoral process should make similar efforts towards fully engendering the electoral process. For example, political parties need to mainstream gender and adopt affirmative action in their internal structures and democratic processes including elections. They must consider adopting measures that would deliberately facilitate effective participation of women in elective politics and leadership in Kenya. There is also a need to encourage women to register as voters in large numbers and to turn out to vote for the candidate of their choice, especially female candidates. In this respect, IED urges a comprehensive review of the Constitution and other electoral laws in the long term or minimum amendments to the Constitution and other electoral laws in which mixed member proportional representation should be adopted to give women more and increased avenues for participation in the electoral process.*

#### *9.2.6 Training of election officials*

*The performance of the ECK in the management and conduct of the by-election was generally professional. The Election Officials were generally well trained and carried out their duties professionally. They were also very cooperative and ready to assist voters and observers. The ECK Commissioners who were on the ground for the by-election were also very professional and very cooperative. However, performance setbacks were observed in relation to late opening of some polling stations. This was largely due to late arrival of some Election Officials at the polling stations. This resulted in unnecessary delays in opening the affected polling stations, thus inconveniencing voters. Therefore, it is important for ECK to emphasize to the officials during training on the need to adhere to high professional standards. The Returning Officers and the Presiding Officers have a professional responsibility to ensure that all Election Officials meet the required performance standards, including discipline. The ECK should also consider continuous training for the Election Officials. Procedures of assisting voters to ensure secrecy of the ballot and proper scrutiny and fast but accurate counting of votes etc should be priority areas for such training. The ECK should also develop and put in place performance standards and mechanisms for evaluating the performance of the Election Officials. Evaluation of performance will assist ECK in identifying and retaining competent and professional officials from its pool of trained Election Officials.*

### 9.2.7 Training of political parties, party candidates, agents and supporters

*Political parties, party candidates, agents and supporters remain the key perpetrators of electoral violence, voter bribery, influence and inducements and other electoral malpractices. Party candidates and agents still committed the don'ts of electoral process. IED recommends that much greater attention should be paid to the training of party candidates and agents, by providing a thorough, uniform and better training.*

*IED recommends that political parties and party candidates must take greater responsibility towards in safeguarding the integrity of the electoral process by ensuring that it remains peaceful, free and fair. Indeed, the permanent solution to electoral violence and other electoral malpractices lie with political parties, politicians and their supporters. This requires a change of attitude and perception towards the electoral process. It also requires the inculcation of a democratic and tolerance culture. Therefore, political parties and politicians learn to exercise restraint and tolerance in political and electoral activities. They should also begin to embrace civic/voter education in their programmes and activities and disseminate the same to their members and supporters. The ECK must also ensure that the political parties, party candidates and agents sign and adhere strictly to the Electoral Code of Conduct.*

### 9.2.8 Voter Education

*From IED's observation of the by-election, especially the polling day, more needs to be done towards voter education. The low voter turnout in the by-election is a clear indication of voter apathy. IED urges all stakeholders in the electoral process, including political parties to do more in terms of educating the people on their roles and responsibilities in the democratic, political, governance and electoral processes. In particular, the ECK, which has a constitutional mandate to undertake voter education, must take the lead by doubling its efforts. The ECK should also consider developing a standard curriculum for voter education and begin to work in partnership and collaboration with other voter education providers to disseminate voter education using a standard curriculum. The ECK in particular and other stakeholders should also come up with innovative ways, strategies and methodologies for disseminating voter education. Incorporating voter education in the curriculum of schools (from higher primary level to secondary schools and tertiary institutions) is one such innovative way, which should be adopted.*

### 9.2.9 Performance of political parties and politicians

*Elections are basically a contest between various political parties and politicians. As crucial players in the electoral process, political parties and politicians have an*

*obligation and civic responsibility to ensure that the electoral process is peaceful, free and fair. The degree to which election will be judged as having been credible, peaceful, free and fair depends largely on the behaviour and conduct of political parties and politicians. Indeed, political parties and politicians have a significant impact in the democratization process in that they can contribute to or undermine any gains made in the democratization process through positive or negative influence. Therefore, it is significant that political parties and politicians strengthen their capacities and nurture a culture of tolerance, conducive for enhancing the democratisation process and the legitimacy and credibility of the electoral process.*

*There is also a need for political parties to adopt clear nomination and election rules, which should be applied and followed strictly during the party nominations. Despite the fact that nominations strictly belong in the realm of the internal affairs of political parties, political parties must begin to see the nomination exercise as part of the democratization process and therefore open it up for competition requiring independent umpires. In this regard and to make the nomination exercise more credible and professional, political parties must begin to involve a professional independent body like the ECK to help them manage and conduct the nominations. In addition, they should involve the participation of independent observers in the process.*

*IED also urges all the stakeholders involved especially the Ministry of Justice and Constitutional Affairs, Kenya Law Reform Commission and the ECK to speed up the process of adopting the pending Political Parties Bill into law. Through this Bill, sanity and order will reign in the nomination process of political parties. In addition, there will be necessary checks and balances to ensure that political parties do not flout their nomination and election. Finally, officials and leaders of political parties must begin to embrace impartiality during the party nominations. In this regard, they must begin to refrain from imposing their choice of candidates on the people. In other words, they should keep off the nomination process and leave it for the party members/voters to make the decision through popular vote.*

#### *9.2.10 Reform and consolidation of electoral laws*

*IED proposes that ECK should pursue with vigour reform and consolidation of electoral and other related laws, which can ensure that ECK has the requisite power, authority and independence to investigate and prosecute offenders of electoral laws. Such laws would also ensure that the police are fully under and responsible to the ECK during the elections. Such laws would also level the political playing ground further and enhance the independence of the ECK. In this regard, IED urges the ECK, the Ministry of Justice and Constitutional Affairs, the Kenya Law Reform Commission and the Office of the Attorney General to speed up the process of adopting the pending Political Parties Bill into Law. In addition, they should fast*

*track the completion and adoption into law of the pending consolidated Elections Bill 2005 developed with the support from IED.*

#### *9.2.11 Voters register with voters' photographs and bio data*

*Accurate and reliable voters' register is the bedrock of a democratic electoral process. In order to achieve accuracy and enhance the credibility and integrity of the voters' register, it is recommended that ECK should consider introducing a new voters' register bearing voters' photographs and bio data. This will assist in eliminating the problem of disenfranchisement of voters. It will also enhance the process of identifying voters and eliminate reliance on original national identity cards as the primary identification document for voters. It will also help streamline the documents required from voters before they are allowed to vote. Indeed, with a register bearing the voters photograph and bio data, a voter will only be required to carry one identification document, which can either be a voters' card or national identity card, and not both as is currently happening.*

*We hope that the information and recommendations in this report will be of great use to everybody concerned with or interested in the electoral process in Kenya. IED recommends that the ECK and other relevant institutions of governance including political parties identified in the report will implement the recommendations to facilitate the evolution of a culture of democracy and good governance in Kenya.*