## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LIST OF ABBREVIATIONS</td>
<td>5</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>6</td>
</tr>
<tr>
<td>FOREWORD</td>
<td>7</td>
</tr>
<tr>
<td>PREFACE</td>
<td>9</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>10</td>
</tr>
<tr>
<td><strong>CHAPTER 1</strong>: Introduction to the Judiciary</td>
<td>13</td>
</tr>
<tr>
<td>Working Committee on Elections</td>
<td></td>
</tr>
<tr>
<td><strong>CHAPTER 2</strong>: Training</td>
<td>19</td>
</tr>
<tr>
<td><strong>CHAPTER 3</strong>: Stakeholder Engagement</td>
<td>31</td>
</tr>
<tr>
<td><strong>CHAPTER 4</strong>: Monitoring and Evaluation</td>
<td>37</td>
</tr>
<tr>
<td><strong>CHAPTER 5</strong>: Engagement with the Public</td>
<td>43</td>
</tr>
<tr>
<td><strong>CHAPTER 6</strong>: Legal and Administrative Arrangements</td>
<td>47</td>
</tr>
</tbody>
</table>

## ANNEXES

<table>
<thead>
<tr>
<th>Annex</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ANNEX 1</strong>: Jurisprudence Emanating from the Election Courts in 2013</td>
<td>53</td>
</tr>
<tr>
<td><strong>ANNEX 2</strong>: Highlights of the Presidential Election Petition, 2013</td>
<td>59</td>
</tr>
<tr>
<td><strong>ANNEX 3</strong>: Status of Petitions Concluded as at 20th of September, 2013</td>
<td>63</td>
</tr>
<tr>
<td><strong>ANNEX 4</strong>: Status of Petitions as at 20th of September, 2013</td>
<td>65</td>
</tr>
<tr>
<td><strong>ANNEX 5</strong>: Election Petition Appeals in the Court of Appeal, as at 26th of September, 2013</td>
<td>66</td>
</tr>
<tr>
<td><strong>ANNEX 6</strong>: High Court Election Petition Appeals as at 26th of September, 2013</td>
<td>72</td>
</tr>
</tbody>
</table>
# List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CMS</td>
<td>Case Management System</td>
</tr>
<tr>
<td>DPAC</td>
<td>Directorate of Public Affairs and Communications</td>
</tr>
<tr>
<td>EDR</td>
<td>Electoral Dispute Resolution</td>
</tr>
<tr>
<td>EISA</td>
<td>Electoral Institute for Sustainable Democracy in Africa</td>
</tr>
<tr>
<td>EOM</td>
<td>Election Observer Mission</td>
</tr>
<tr>
<td>GIZ</td>
<td>German Development Cooperation</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Commission of Jurists</td>
</tr>
<tr>
<td>IDLO</td>
<td>International Development Law Organization</td>
</tr>
<tr>
<td>IEBC</td>
<td>Independent Electoral and Boundaries Commission</td>
</tr>
<tr>
<td>IED</td>
<td>Institute for Education in Democracy</td>
</tr>
<tr>
<td>ILEG</td>
<td>Institute for Law and Environmental Governance</td>
</tr>
<tr>
<td>IREC</td>
<td>Independent Review Commission</td>
</tr>
<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
</tr>
<tr>
<td>M &amp; E</td>
<td>Monitoring and Evaluation</td>
</tr>
<tr>
<td>JWCEP</td>
<td>Judiciary Working Committee on Election Preparations</td>
</tr>
<tr>
<td>NCLR</td>
<td>National Council for Law Reporting</td>
</tr>
<tr>
<td>OCS</td>
<td>Officer Commanding Station</td>
</tr>
<tr>
<td>OCPD</td>
<td>Officer Commanding Police Division</td>
</tr>
</tbody>
</table>
ACKNOWLEDGEMENTS

The JWCEP (the Committee) remains grateful for the efforts of various actors whose contribution has made the production of this report possible. The efforts of these actors have contributed in diverse ways to the effectiveness of the work of the Committee thus far.

The JWCEP sincerely wishes to thank the Hon. Chief Justice, Dr. Willy Mutunga and the Chief Registrar of the Judiciary, Mrs Gladys Boss Shollei, who have supported the Committee and given it the necessary tools to achieve its mandate as outlined under the terms of reference.

The Committee also remains grateful to the various civil society stakeholders and development partners whose technical assistance and unwavering support continue to be invaluable to the Committee and its Secretariat. The expertise and resources of these actors continue to complement those of the Committee. In particular, we wish to acknowledge the support granted to us by the International Development Law Organization (IDLO), the Electoral Institute for Sustainable Democracy in Africa (EI- SA-Kenya), the International Commission of Jurists (ICJ-K), the International Foundation of Electoral Systems (IFES), the German Development Cooperation/GIZ, the Ford Foundation, the Institute for Law and Environmental Governance (ILEG) and Institute for Education in Democracy (IED).

We are also grateful for the role played by the various judicial officers and staff members in the process of electoral dispute resolution. We are especially grateful to the judicial officers who served as trainers at the various trainings facilitated by the Committee in different parts of the country. They have served to bolster the limited training capacity of the Committee.

The research support of Ms. Victoria Miyandazi, Ms. Wanjiru Kamanda, Ms Medline Murumba, Mr. Paul Otieno and Ms. Lucianna Thuo remains invaluable to the Committee and its Secretariat. The Committee is immensely grateful for the support of IDLO in facilitating the presence of these researchers at the Secretariat. The Committee is also grateful to Mr. Peter Muriithi, Ms Judith Kibuye, Ms Lilian Udoto, Ms Ruth Mwaura and Mrs Roseline Luvuga, whose role at the Secretariat is invaluable. Their tireless endeavours in assisting the Committee to lay the groundwork for electoral justice as well as providing support to the stations that were handling election petitions has proved vital to the success of the work of the Committee.

Finally, the Committee would especially like to acknowledge the International Development Law Organization (IDLO) that has generously supported the process of preparation and publication of this report. The project consultant, Amos Omollo, is also acknowledged for his oversight in the editorial, design and production of this report.
FOREWORD

Following the chaotic aftermath of the 2007 elections, the 2013 general elections came with a lot of trepidation. In addition, they promised to become easily the most complex elections in the nation's history, and that under a new constitution. The Judiciary through its Working Committee on Election Preparations has been hard at work, laying the groundwork for the Judiciary's role in the electoral process since May 2012.

The country was also transitioning into a new system of governance that would put to the test the readiness and effectiveness of key institutions such as the Judiciary. The successful holding and conclusion of the 2013 elections would be critical for the implementation of the constitutional provisions on devolved government. It was therefore necessary for the electoral dispute resolution process to be concluded expeditiously to pave way for the governance processes.

By all accounts, the general elections went according to script. There were no acts of lawlessness or any violence and the Judiciary received a massive vote of confidence when it received a total of 188 petitions, the highest number ever. As an indication of the state of readiness of the Judiciary, even this impressive figure fell short of the 500 petitions that had been envisaged by the Committee.

Nevertheless, these petitions put a strain on the already limited human and financial resources of the Judiciary. Even though arrangements are being made to ameliorate the situation for future dispute resolution processes, adjustments had to be made for 2013. Administrative arrangements played a key role in the handling of election petitions. These included designating the courts in which petitions would be heard and transferring judicial officers to areas where there were shortages in relation to the cases filed. The office of the Principal Judge and the Registrar of the High Court proved very instrumental in this regard.

Even with the limited financial and infrastructural resources, the election courts in 2013 have managed to hear and determine the majority of election petitions filed following the general elections. The diligence with which the election courts have worked to deliver electoral justice is laudable and the Committee is proud of the achievements of these judicial officers involved.

The support of stakeholders remains crucial to the work of the Committee, especially as the dispute resolution process comes to a close and the evaluation phase begins in earnest. We continue to be grateful for the unrelenting support of all stakeholders and well-wishers in our work. The success we have achieved so far would be impossible without them.
In keeping with the very high regard that the public now has of the Judiciary, we have endeavoured to keep the Judiciary’s promise of effective and efficient dispensation of electoral justice. We are pleased to share with you our assessment of our progress this far and look forward to sharing with you our final report at the end of our work.

Finally, I wish to thank all the members of the Committee and in particular Justice Maraga who frequently chaired the meetings of the Committee.

Mr. Justice Mohammed K. Ibrahim,
Supreme Court Judge,
Chair, Judiciary Working Committee on Election Preparations
The Committee was unveiled in May 2012, less than a year before the March 2013 general elections. This meant that it had a limited period of time within which to prepare the Judiciary to play its role in the 2013 elections. The Judiciary had also not made adequate administrative arrangements necessary for successful electoral dispute resolution in 2013. These constraints, coupled with the uniqueness of the 2013 elections and other funding and human resource limitations placed the Judiciary in a uniquely difficult position in the run up to the general elections.

This committee is the first of its kind in the Judiciary. The preparatory work put in by the Committee led to the Judiciary’s ranking as the institution that was best prepared for the elections. It gives me great pleasure to have been a part of the work of the Committee and happy that the efforts we put in played a significant role in laying the foundation for electoral justice in 2013.

The work of the Committee would have been impossible without the support of the staff of the Secretariat who laboured indefatigably to make the work of the Committee a success. Both the legal and administrative staff worked tirelessly to monitor the progress of election petitions and provide the necessary support in the process. I am also indebted to all the deputy registrars, legal researchers, executive officers and ICT officers in the various stations where election petitions were being handled. Their cooperation and feedback made the process much smoother and more expedient.

Lastly, I take this opportunity to convey my sincere gratitude to Hon. Rosslyn Oganyo, a member of the JWCEP Committee, who was the acting Secretary and CEO in July and August 2013 when I was away from the Secretariat. The secretariat continued to thrive under her enthusiastic direction and leadership. The post-election trainings and the monitoring and evaluation phase of the elections petitions moved on seamlessly. I also thank all the members of the Committee for their tireless efforts and in particular Justice Maraga, who frequently chaired the meetings of the Committee.

It is my hope that this report serves to increase the confidence of the public and all local and international stakeholders in the ability of the Judiciary to deliver on its promise of expeditious justice and as a precursor to the final report on our work which will be released at the end of our term.

Hon. Lillian Arika,
Acting Senior Principal Magistrate
Secretary/CEO, the Judiciary Working Committee on Election Preparations
INTRODUCTION

Transparency and accountability are among the national values and principles that guide the Judiciary in the fulfilment of its mandate of delivering justice to the people of Kenya. The publication of this report is partly in fulfilment of the Committee’s undertaking to keep the public and other stakeholders informed of the work of the Judiciary in handling election-related disputes.

This being the first report since the post-election dispute resolution process began, this report provides a summary of the continuing work of the Judiciary under the aegis of the Committee in relation to the election dispute resolution process. It also provides the reader with a summary of election petitions and how they have been handled. The judiciary also continues to handle other election-related matters, including disputes related to nominations to special seats and election appeals.

As head of the Ad Hoc Elections Dispute Settlement Division, I am grateful for the support received from all the stations where election petitions were being heard. The successful conduct of the dispute resolution process would have been impossible without the gracious support and cooperation of all Judiciary staff. The teamwork that the stations have shown has been remarkable.

I am also gratified by the progress of election petitions despite the challenges faced across the stations. I am especially pleased with the quality and consistency of the jurisprudence that has emanated from the election courts and the sound jurisprudence that is being developed under the new electoral regime. This consistency is especially important as it lays a solid foundation on which to build electoral jurisprudence in Kenya under the new electoral laws and governance structures.

Justice David A. S. Majanja,
Judge of the High Court &
Head of Ad Hoc Election Dispute Settlement Division
Mr. Justice David Maraga at the Technical Retreat

Judiciary Working Committee on Election Preparation (JW-CEP) at the farewell luncheon for Ms. Victoria Miyandazi
Constitutional and Political Background

The Constitution of Kenya, 2010 was promulgated by His Excellency President Mwai Kibaki, on 27th August 2010, marking an auspicious and historic moment for Kenya. That watershed event signaled the end of a long journey for the country in search of a constitutional dispensation which truly reflected the will and the aspirations of the people of Kenya.

The independence Constitution that came into force on 12 December 1963 had guided Kenya’s political and socio-economic development for 47 years. During this period, it was subjected to 38 amendments. One of the most significant constitutional amendments took place in 1982, making Kenya a de jure one-party state. This state of affairs subsisted for a period of nine years. In 1991, following sustained political pressure to return the country into a multi-party state, section 2A thereof was repealed and the country once more reverted to a pluralist system of government.

Whereas the repeal of the unpopular section 2A of the Constitution marked a major achievement in the fight for democracy, Kenyans were not yet satisfied. Instead of
marking an end, that event signaled the beginning of heightened pressure for constitutional reforms, characterized by intense advocacy and political activities for a period of another seven years. These demands for change culminated in the enactment of the Constitution of Kenya Review Act of 1998. The 1998 Act provided the legal framework for a participatory constitutional-making process, which resulted in the 2005 Draft Constitution that was rejected at a popular referendum held in the same year. However, the outcome of the 2005 referendum was by no means the end of the collective desire for comprehensive constitutional reforms.

Following the disputed presidential elections in December 2007 and the ensuing post-election violence, two pieces of legislation were enacted to lead Kenyans to a new Constitution. One was the Constitution of Kenya (Amendment) Act 2008, which was enacted on 22 December 2008. The 2008 Amendment Act provided a new roadmap for constitutional reforms and established the organs and mechanisms for constitutional review. The second was the Constitution of Kenya Review Act 2008, which was enacted on 29 December 2008. This Act sought to facilitate the completion of the review process. It therefore provided a legal framework for the review mechanisms and established organs charged with the responsibility of facilitating the review process.

The 2008 Review Act established a Committee of Experts (COE) which was mandated to finalize its work on a new (harmonized) draft Constitution within twelve months from the date of appointment. On 17 November 2009, the COE published a Harmonized Draft Constitution. The Draft Constitution was approved by the National Assembly and subjected to a referendum conducted by the Interim Independent Electoral Commission (IIEC).

In the referendum conducted on 4th August 2010, the Draft Constitution received 67% support of the electorate and, in accordance with the enabling law, came into force on 27th August 2010, the date on which it was promulgated by the President. The promulgation of the Constitution on 27th August 2010 therefore marked the beginning of an era of good governance and political administration. It rekindled the hope for a new social order and economic prosperity guided by national values and principles of governance set out in Article 10 of the Constitution.

With that, the country embarked on reform and rejuvenation of key public offices, chief of them being the Judiciary. The period also saw the creation of new bodies and institutions meant to help realize the promise of the Constitution and to enhance service delivery in general.

Electoral Context

Elections are contests, and the results are more often than not disputed. Where the election process is not managed in a manner that promotes respect for the rule of law, they are perceived as not being free and fair and this can result in instability in a country. There was therefore a need for development of a proper approach towards an efficient Electoral Dispute Resolution (EDR) process. The Judiciary, being the apex of any electoral system, therefore plays an integral role to ensure that elections are free and fair.

The 2013 elections were unprecedented both in scale and complexity. Kenyans were preparing to choose close to 2000 individuals for public office. The elections took place in a particularly challenging context framed by the 2007 elections and the violence that followed in their wake. Additionally, there were direct and important ramifi-
cations of the International Criminal Court proceedings on national politics generally and on the forthcoming General Election.

The elections were also to give way to the implementation of Chapter Eleven of the Constitution which provides for the devolved system of governance. The transition to a new political dispensation was demanding and there were fears that the nation and its institutions, including the Judiciary, would not be well prepared.

The 2013 General Elections were also of wider regional and international importance in terms of both the image of the country as well as in regard to the lessons that would be taken from Kenya’s model of transitional justice and reconciliation. The Chief Justice in establishing the Working Committee stated that “the country’s ambition is to not only to prevent a recurrence of past mistakes, but also to deliver an election that would be a model for other democracies.”

### Challenges Posed by the 2013 Elections

1. **Constitutional electoral dispute resolution**: Political rights have been entrenched in the Constitution as human rights, and the Courts are therefore called upon to resolve these election disputes with this in mind. Article 10 of the Constitution has also enacted values that guide the interpretation of the Constitution.

2. **New electoral laws**: New laws had been enacted with the Elections Act (Act No. 24 of 2011) repealing the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya and the Elections Offences Act) and the Political Parties Act, 2011 repealing the Political Parties Act of 2007. These laws were yet to be tested and for the most part it would be the first time that the courts dealt with them.

3. **The role of the media in the EDR process**: In the past, the media had been blamed for skewed or convoluted reporting that confuses the public and puts pressure on the judicial officers. The IREC (Kriegler) Report faulted the media for their role in the post-2007 election violence. Moreover, there is not sufficient implementation of laws such as Article 34(4) of the Constitution and the Media Act that guarantee equitable access to the media at election time adequate access to information by both the media and the general public is still far from being realized.

4. **Stringent timelines**: The Constitution and the Elections Act have set out timelines for the resolution of electoral disputes. Whereas these timelines are key in speeding up the wheels of justice, the downside is that the provisions did not set out fall-back clauses or make contingency provisions for instances when these strict timelines are not met. There is therefore no room for deviation from these timelines. However, neither the Constitution nor the Elections Act has set out the mechanisms of ensuring that elections disputes are resolved within the stipulated timeframe. The Judiciary was therefore required to step in and put in place administrative arrangements to ensure that these timelines were met.

5. **Novelty and limited relevant experience**: Most judicial officers did not have experience in handling electoral disputes since they had not had much prior interaction with electoral law, practice and procedure. This was exacerbated by the unprecedented scale of the 2013 elections.
vi. Low public confidence in the Judiciary: The waning confidence of the public in the Judiciary’s satisfactory handling of electoral disputes has never been more evident than in the aftermath of the 2007 elections. The handling of election-related cases, including cases related to the determination of the election date and boundary delimitation, began to enhance public confidence in the Judiciary.

vii. Legislative inconsistencies: There were inconsistencies in the various legislations governing elections. For instance, under section 76 (1) (a) of the Elections Act, a petition to challenge the validity of an election shall be filed within 28 days of the publication of the results in the Gazette and served within 15 days of presentation. Under section 2 of that Act, ‘election’ means ‘a presidential, parliamentary or county election and includes a by-election’. Without a clear distinction between this provision and Article 140 of the Constitution as read with rule 28 of the Supreme Court Rules, there is a patent conflict. Another example of the inconsistencies is where section 78 (1) of the Elections Act requires a petitioner to deposit security for payment of costs that may become payable by the petitioner not more than 10 days after the presentation of a petition whereas, under Rule 28 (6) of the Supreme Court Rules, the petitioner is required to deposit security for costs within 7 days of filing the petition. There were therefore glaring inconsistencies between the provisions of the various legislations dealing with elections.

viii. Little room for discretion: The electoral dispute resolution process is a heavily regulated process, especially because electoral disputes touch on issues of breach of solidly established fundamental human rights such as the freedoms of opinion, expression, association and peaceful assembly. The right to enjoy free and fair elections derives from the right to participate in governance both directly and through representatives. There is therefore little room for judicial discretion.

ix. Determination (Taxation) of Costs: The manner in which costs arising from election petitions had been determined in the past had not been uniform and it was contended that there were instances when it resulted in unjust enrichment and did not bear any relationship to the work done and the expenses paid in the case thus undermining the right of access to justice. One of the consequences of this was that the taxpayer was forced to bear the burden of costs.

The Role of the Judiciary in the EDR Process

The Judiciary is the only organ that the Constitution has entrusted with the resolution of electoral disputes after the declaration of results. One of the most significant initiatives in this regard was the decision by the Chief Justice to appoint the Judiciary Working Committee on Elections on the 10th of May 2012. The creation of the JWCEP was in recognition of the central role of the courts in the elections management process and, consequently, the guarantee of free and fair elections. The Judiciary Working Committee on Election Preparations is the body that is tasked with assisting the Judiciary to prepare for electoral dispute resolution. It was unveiled on the 10th of May 2012. In his speech at the launch of the Committee, the CJ stated:

‘The electoral crisis of 2007 and its aftermath was caused by numerous malpractices and outright criminal activity, but exacerbated in a large part by a refusal
to take disputes to the courts. Numerous reforms later, the country’s ambition is to not only prevent a recurrence of past mistakes, but also to deliver an election that would be a model for other democracies. Through proper institutional conduct, we in the Judiciary intend to earn the public confidence that was so dented at the last election as to discourage parties form taking disputes to court.’

**Terms of Reference**

The mandate of the Committee is to:

i. To advise the Judiciary on the administrative arrangements and measures for the efficient disposal of election-related disputes.

ii. To develop and implement, in conjunction with the Judiciary Training Institute, a training programme for the efficient and effective management of election disputes for judicial officers and support staff.

iii. To develop and design a system for monitoring and evaluating the management and administration of election-related disputes in court.

iv. To liaise and coordinate with stakeholders to ensure efficient, effective and timely resolution of election related disputes and offences.

v. To advise the Judiciary on the information that needs to be developed and disseminated to the public on the avenues open to it to pursue electoral disputes and the approaches that will be employed.

The JWCEP released its 120-Day Report in September 2012 and its pre-election report in February 2013. In the subsequent period, the Committee undertook several activities under the terms of reference, all aimed at preparing the Judiciary for elections, which were peacefully conducted and concluded. This report sets out a summary of the work of the JWCEP since March 2013.

**Composition of the JWCEP**

The Committee members of the JWCEP are:

- Justice Mohammed Ibrahim, Supreme Court Judge (Chairman)
- Justice (Dr.) Smokin Wanjala, Supreme Court Judge (Member)
- Justice David Maraga, Court of Appeal Judge (Vice-Chair)
- Justice Paul Kihara Kariuki, Court of Appeal Judge (Member)
- Lady Justice Hellen Omondi, High Court Judge (Member)
- Justice David Majanja, High Court Judge (Member)
- Hon. Roseline Oganyo, Senior Principal Magistrate (Member)
- Hon. Lillian Arika, Ag Senior Principal Magistrate (Secretary)
- Justice Mbogholi Msagha, Principal Judge of the High Court (Co-opted Member)
Hon. Stephen Riechi and Justice Luka Kimaru making a presentation on scrutiny at the Select Bench Colloquium at the Great Rift Valley Lodge.
The mandate of the Committee in relation to training is to develop and implement, in conjunction with the Judiciary Training Institute, a training programme for the efficient and effective management of election disputes for judicial officers and support staff.

Trainings for judiciary officers and judiciary staff formed a key component of the Judiciary Working Committee on Election Preparation’s agenda. This was based on the realization that the handling of election petitions required careful and extensive preparation. This being the first time that the electoral regime under the current constitution was being tested through dispute resolution, it was important for the select bench to be well-armed for the arduous task. The training was also in partial fulfillment of the Second Pillar of the Judiciary Transformation Framework: Transformational Leadership, Organizational Culture and Professional and Motivated Staff. Key Result Area 7 focuses on the growth of jurisprudence and judicial practice as one of the tools for the growth of sound jurisprudence.

Enhancing the skills of the judicial officers and judiciary staff to handle election petitions was therefore undertaken through a series of trainings organized by the JWCEP as follows.

**ICT Officers Training On EDR**

The training was held at the Crowne Plaza Hotel. This training was particularly significant because it was the first time that the case management system was going to be
used for the monitoring and evaluation of cases. The use of the system in the electoral dispute resolution process was therefore a pilot programme to test the system before it could be rolled out for use in the wider dispute resolution process.

The unveiling of the case management system was aimed at providing a tool for the JWCEP to monitor the progress of election petitions. This would in turn enable the JWCEP to provide the required support to judicial officers in the hearing and determination of petitions within the timelines set out in the law.

One of the advantages of the system is its capacity to hold scanned documents. What this means for the Judiciary is that in the long run, there will be no need for physical copies of the court files. As such, the hearing of a matter will not be derailed by the absence of a court file. The participants were therefore asked to ensure that the final copies of the rulings and judgments were uploaded onto the system, which would automatically assign them case numbers. At the conclusion of the training the participants were issued with modems and laptops to assist in their work.

Training of Court of Appeal Staff
This training was conducted at the Maanzoni Lodge between the 14th and the 16th of August 2013. The training was graciously funded by the International Development Law Organization (IDLO). The training was a follow-up to the training of the Court of Appeal judges held in July 2013.

This training was particularly important because the work of the Court of Appeal judges in handling election appeals would be hampered without proper administrative support. The Committee therefore considered it important to sensitize the staff both on the new electoral regime and what their role would be in the electoral appeal process. The staff members were also guided through the principles and standards of EDR, the legal framework for elections in Kenya, electoral processes
The Court of Appeal Judges Training

The training of Court of Appeal judges was conducted from 28th to the 31st of July 2013 at the Boma Hotel in Nairobi. The training was conducted in conjunction with the JTI and facilitated by the gracious support of EISA Kenya. The programme was coordinated by Justice Maraga, Judge of Appeal, and a member of the Committee.

The training was particularly instrumental since, owing to the amendments introduced to the Elections Act in 2012, the electoral dispute resolution process does not end with the trial courts. The amendments to the Elections Act introduced the right of appeal both from the Magistrates’ Courts and from the High Court to the Court of Appeal. These appeals are limited to matters of law only. The resolution of election appeals is also part of the wider process of democracy.

It was therefore important that the Court of Appeal judges be sensitized on what to expect in the dispute resolution process. Since the Judiciary had taken great pains to assure the public not only of its ability as an impartial arbiter in election-related matters but also of its capacity to do so expeditiously, it was important to share experiences with the judges and emphasize the need for expeditious disposal of election petition appeals.

The training provided a forum for sharing of experiences not just with other Kenyan judges who had previously taken part in handling election petitions, but also with Ugandan judges. The electoral regime in Uganda is quite similar to the Kenyan one and Uganda has had relative success in the resolution of electoral disputes. Judge Lawrence Gidudu, a judge of the High Court of Uganda presented a paper on Management and Trial of Election Petitions. He also presented a paper on Management of Election Appeals on behalf of Justice Remmy Kasule of the Court of Appeal in Uganda who was unable to attend. The Ugandan experiences highlighted some of the challenges faced in handling election petition appeals.

The process of electoral dispute resolution in the Court of Appeal started with at least 6 decisions having been delivered by different benches of the Court of Appeal. One of the challenging issues before the Court of Appeal was to determine the constitutionality of section 76 of the Elections Act, and the time within which petitions should be filed and whether the Court of Appeal has jurisdiction to hear and determine interlocutory appeals arising form petitions in the High Court. The decision of the Court of Appeal have trod on new jurisprudential ground. It is also noteworthy that the appeals have been heard and determined in record time. (See Annex on Court of Appeal decisions.)

Technical Retreat of the JWCEP

The Judiciary Working Committee on Election Preparations held its technical retreat between the 11th and the 14th of July 2013 at the Serena Kilaguni Lodge in Mtito Andei. This was the second technical retreat held by the Committee, the first such event having been held in July 2012. The purpose of the retreat was to take
stock of the work of the Committee in the time that it had been in operation and to chart the way forward both for the remainder of its term and for future committees.

The participants were invited to give their feedback on the work of the Committee under each of its terms of reference to assess the following:

- What each term of reference was intended to achieve;
- To what extent the objective had been achieved;
- How it had been achieved;
- The challenges that had been faced;
- The lessons learnt, and;
- The role of JWCEP in the implementation and management of the tasks.

The facilitators at the retreat, Dr. Monica Kerrets-Makau and Tom Mogeni, are experienced Monitoring and Evaluation experts and they ably guided the process of assessing the work of the Secretariat. It was noted that the Committee did not have a functional monitoring and evaluation tool from the outset, which made it difficult to measure how well it had achieved its mandate. It was however acknowledged that the Committee had faced capacity and resource constraints, which had compromised its ability to meet some of its objectives.

The retreat provided a forum for the Committee to receive useful feedback from the persons who have been affected by its work. The Committee thus gained an objective perspective on its performance and identified areas where it could be improved. These lessons will provide an important point of reference for the work of the Committee going forward.

Overall, it was the view of the participants that the Committee had achieved a lot even in the face of significant time and resource constraints. It was agreed that the idea of having a standing committee to assist the Judiciary in dealing with issues that touch on the elections.
Team-Building Retreat of the JWCEP Secretariat

As part of its continuing internal capacity building initiatives, the Secretariat of the JWCEP held its retreat on the 10th of July at the Boma Hotel in Nairobi. The retreat was conducted by Working Smart, an organizational development team and facilitated by IDLO as part of its technical capacity support to the JWCEP and its Secretariat. The retreat was meant to build on the lessons of a similar training that Working Smart had conducted for the Secretariat in February, 2013.

The Working Smart team began by enlisting feedback of the Secretariat on the areas where the functioning of the team had improved and areas where work still needed to be put in to improve the working of the team. The facilitators addressed the team on conflict handling, performance management, workflow and effective delegation.

Team-building is particularly important for the Secretariat because it comprises a diverse and multicultural team, some of whose members have been seconded from other offices both within and from outside the judiciary. The intense pace of activity that often characterizes the working of the Secretariat makes it imperative to hold regular team building activities to both mould the team and sustain its working relationships. Given the importance of the work of the JWCEP to the electoral and governance systems of the country, the smooth working of its Secretariat is critical to the Committee’s performance. The members of the Secretariat emerged from the retreat with an improved understanding of the importance of team work and synergy.

Legal Researchers Training

The Legal Researchers’ Training on EDR was organized by the JWCEP in conjunction with the Registrar of the High Court and was held at the Maanzoni Lodge on the 29th and 30th of April, 2013. JWCEP had the opportunity to further train the legal researchers on the legal framework regulating elections in Kenya and the pro-
cess to be followed during vote scrutiny, tallying, examination and recount. The key role that the legal researchers had to play during the hearing and determination of election petitions was emphasized. There was also assurance to the legal researchers of the JWCEP's support.

Executive Officers Training on EDR

The training was held on 25th and 26th April 2013 at Hotel Cathay, Nakuru. The two-day training was prepared by the JWCEP to brief the Executive Officers on their role regarding the filing of Election Petitions and the organization of election dispute resolution processes. During the training, participants were taken through the legal framework regulating elections in Kenya, the process to be followed during vote scrutiny, tallying, examination and recount and the election petition checklist.

The participants were also trained on the e-based case management system and the principles of Election Dispute Resolution, Leadership and Integrity, and Public and Media Management among other important topics. The training also gave a good opportunity for participants to give their input and recommendations on the strategies that the Judiciary through the advice of the JWCEP had taken to ensure that election disputes were efficiently and expeditiously heard and determined.

The speakers at the training emphasized the need for the executive officers to conduct themselves with utmost integrity, especially during the entire election disputes resolution period as the Judiciary would be judged by how it conducted and resolved the election disputes. It was further agreed that maintaining the Judiciary's credibility and public confidence was a collective duty of all the officers and members of staff of the Judiciary. The fact that the entire country and the world in general were now focused on the Judiciary was emphasized during the training. This was stated to be a great motivator for the Judiciary to conduct itself in a manner that is beyond reproach.

This training was particularly important because the work of the Deputy Registrars is complemented by that of the Executive Officers, who provide support to the
Deputy Registrars in receiving election petitions and managing the entire dispute resolution process. The role of Executive Officers is particularly instrumental in the process of scrutiny and recount of votes. Since, as with the judicial officers, most of the Executive Officers had not been exposed to the new electoral regime, this training was instrumental in familiarizing the officers with the electoral process and expounding their role in the same.

The training also served as a forum for motivating the officers to play their role in the Judiciary transformation process. This is because Executive Officers are the face of the Judiciary when petitions are filed. How they related with the public during this process would therefore be very instrumental to moulding the public perception of the Judiciary.

**Colloquium for the Select Bench**

The colloquium of the Select Bench, which was supported by EISA, was held at the Great Rift Valley Lodge, Naivasha on the 22nd and 23rd April 2013. It was graced by the Deputy Chief Justice (designate at the time), Lady Justice Kalpana Rawal, Justice Mohammed Ibrahim, who is a Supreme Court Judge and Chair of the JWCEP and Justice Richard Mwongo, Principal Judge of the High Court. In their speeches, the three Justices emphasized the importance of the proper handling of election petitions by the Judiciary.

On the training content, participants at the colloquium were taken through the legal framework regulating elections in Kenya as well as the process to be followed during vote scrutiny, tallying, examination and recount, and the election petition checklist. On the second day of the training the participants also had an opportunity to analyze the Supreme Court decision on the Presidential Election Petition No. 5 of 2013.
At the end of the colloquium, the participants had consulted and discussed on the issues that required clarification pertaining to the hearing and determination of election petitions. The security of the judicial officers hearing election petitions stood out as a key concern during the forum, and the judicial officers were assured that the Judiciary had made the necessary security arrangements for them. They were also urged to work closely with the local state security apparatus.

The proof of the success of the training can only be evidenced by the quality of the jurisprudence that is received from the courts. So far, over 100 rulings and about 95 judgments have been delivered by the election courts. The JWCEP is encouraged by the rich jurisprudence that is emerging from the electoral courts in 2013.

The colloquium also gave the participants a forum for sharing experiences with Judges who had already handled election petitions. This gave them an opportunity to clarify any issues that were still unclear in relation to petitions. This training was particularly useful because of the practical components of the programme.

**Deputy Registrars’ Training On EDR**

The training was held from 13-16th March 2013 at Maanzoni Lodge. Justice Hellen Omondi was instrumental in facilitating this training. Participants in the training included Deputy Registrars and Magistrates who had missed the EDR regional trainings in January 2013.

The training of this group arose out of realization of the important role that these judicial officers play in the electoral dispute resolution process. Before the electoral courts are appointed, they are tasked with the making of administrative arrangements for the hearing of election petitions in their respective stations.

In addition, during the electoral dispute resolution process, and in particular where the electoral court orders that scrutiny of election material be carried out, it is these officers that are tasked with conducting the exercise with the supervision of the court. They receive the ballot material, conduct the exercise in accordance with the directions of the election court and thereafter prepare a report that aids the court in reaching a decision in respect of the case where a scrutiny was ordered.

Since the election courts could not be designated until the total number of election petitions has been determined, the Deputy Registrars played an important role in the receipt of election petitions. In this regard, the JWCEP had prepared a checklist summarizing the entire electoral process and the documents that the registries were to require from litigants. The document went a long way in simplifying and creating a smooth process of filing petitions.

In particular, the Deputy Registrars advised the JWCEP on the capacity of the various stations to handle election petitions and this played a key role in designating the election courts and expediting the dispensation of justice for this electoral cycle. The advice on the space available in the various stations was also crucial to avoid overburdening some court stations and underutilizing others with greater capacity.

During the training, two key topics were covered: scrutiny of votes and taxation of costs. These topics were particularly relevant as the scrutiny of votes and taxation of costs are the responsibility of Deputy Registrars. The training was particularly timely and relevant to the work of the Registrars owing to the fact that most of the participants had never been engaged in election petitions before.
At the training, the officers were sensitized on the new filing fees for election petitions. These fees had been introduced by an amendment to the Elections (Parliamentary and County Elections) Petition Rules 2013 as contained in Legal Notice 54 of 2013. The participants were notified that the fees would be KShs15,000 for the County Assembly Representative petitions and KShs 30,000 for the other County and Parliamentary election petitions. Filing fees for the response to petition and other documents would remain the same as that charged for ordinary civil matters.

The Checklist developed by JWCEP for county and parliamentary election petitions was introduced to the participants. The registrars appreciated its utility as a tool for receiving and monitoring election petitions filed at various stations.

The key role that the Deputy Registrars would play during the hearing and determination of election petitions was highlighted. The participants were urged to embark on looking for space for storage of ballots and also for the scrutiny and to liaise with the office of the Registrar of the High Court in this regard. They were also advised to liaise with the nearest OCS/OCPD during the scrutiny exercise for security and also to ensure the security of the election material once it was brought to the courts.

This training served to prepare the Deputy Registrars for the process of scrutiny and recount of ballots. This being one of the reliefs that an election court can give, it was very important that those tasked with the process are able to build confidence in the process by carrying it out in accordance with the principles laid down in the law. Most of those trained had never taken part in the process before and thus greatly benefitted from the training experience.

The training, just like all the others that were conducted by the JWCEP also served to increase the technical capacity of the Judiciary staff.
Presidential candidate, Uhuru Kenyatta voting during the 2013 General Elections

An IEBC official assisting a voter in the election process

Presidential candidate, Raila Odinga casting his vote during the 2013 General Elections
President Elect Uhuru Kenyatta being sworn in as the fourth president of the Republic of Kenya

President elect, Uhuru Kenyatta, showing off his Certificate of election from the IEBC

The Supreme Court in session during hearings for the Presidential Election Petition, 2013
Members of the press following proceedings during the Presidential Petition, 2013 in the media tent at the Supreme Court
One of the terms of reference of the JWCEP is to liaise and coordinate with stakeholders for efficient, effective and timely resolution of election disputes and offences. The engagement involves working with a number of organizations that continue to add value to the JWCEP since its establishment and covers various activities within the mandate of JWCEP. Such engagement continues to be important to the work of the JWCEP because the stakeholders provide useful feedback on the work of the Committee.

In the pre-election period, the JWCEP heavily engaged with other public bodies and independent offices such as the IEBC. However, in the run up to elections, it gradually moved away from them to preserve its independence as it assumed its constitutional mandate. Since March 2013, the JWCEP engaged with the following organizations in the fulfillment of its mandate: International Development Law Organization (IDLO), Electoral Institute for Sustainable Democracy in Africa (EISA), International Commission for Jurists-Kenya (ICJ-K), National Council for Law Reporting (NCLR), German Development Corporation (GIZ), Institute for Education in Democracy (IED), and International Foundation of Electoral Systems (IFES).

The International Development Law Organization (IDLO)
The International Development Law Organization (IDLO) is an international, inter-governmental organization with its headquarters in Rome, Italy. It is a non-po-
IDLO has also continued to provide technical assistance in the form of experts who lend their expertise to the JWCEP where there is no internal capacity in a particular field. Since the conduct of the elections on the 4th of March, the work of the JWCEP has shifted to monitoring and evaluation of the progress of election petitions around the country. Since the JWCEP has no internal capacity for monitoring and evaluation, IDLO has undertaken to provide an expert in this field to assist in monitoring the exercise. The expert will also assess the work of the JWCEP against its mandate. This being the first time that such a committee has ever been in place since independence, the assessment will aid the JWCEP in gauging its performance and provide useful lessons for subsequent electoral cycles.

The Electoral Institute for Sustainable Democracy in Africa (EISA)

As a partner, EISA has funded trainings, workshops and other related activities carried out by the JWCEP. From March 2013 to date, the organization has been involved in the Technical Retreat of the Committee, the training of the Court of Appeal judges, the Colloquium of the Select Bench and the Training of the Deputy Registrars. In all these cases, EISA paid for the accommodation, remunerated resource persons and shared publications with participants among others to ensure that these trainings were successful.
International Commission for Jurists, Kenya Chapter (ICJ-K)

The ICJ has also been vital to the JWCEP as a stakeholder, especially as a result of its experience in handling elections in the past. ICJ prepared a case digest on the decisions emanating from the last electoral dispute resolution cycle. The case digest, which is organized according to issues of law touching on elections, has provided a useful tool of reference for the select bench that is handling the cases. Representatives of the organization also attended the Colloquium for Judges and Magistrates and shared some of its publications with the participants. In addition, ICJ-Kenya hosted a roundtable meeting on elections with Chief Justices from other countries in Africa in March that the JWCEP attended.

National Council for Law Reporting (NCLR)

The Judiciary is keen on creating comprehensive jurisprudence on elections under the new electoral regime. Due to the complexity of the first elections under the new electoral code, the decisions of the Judges and Magistrates presiding over the first set of disputes under the new regime are particularly important as legal precedents. Access to these decisions would not be easy without the partnership of NCLR.

The National Council for Law Reporting has created a special segment in its website for rulings and judgments delivered on various election petitions. The ease of access of these decisions enables legal practitioners to monitor the jurisprudence arising from the courts. These decisions have also been utilized by other Judges and Magistrates in the select bench and this has gone a long way in promoting consistency in judicial decisions during this electoral cycle.

NCLR is also currently finalizing the fourth publication in the election petition law reports series that covers the jurisprudence that came up between the last volume in the election petition series and just before the March 2013 Elections. The next volume will cover the jurisprudence that continues to come out from the decisions based on the last elections, which were conducted under the new constitutional and statutory regime of electoral law. This volume will thus form a useful tool for electoral dispute resolution for future dispute resolution cycles.
Engagement with the Carter Center

The Judiciary Working Committee held a meeting with representatives from the Carter Center after the elections. The purpose of the meeting was to share their findings on the March 4 elections before they are released in a report. The Carter Center was represented at the meeting by Dr. David Pottie, Mr. Stephane Mondon and Ms Megan King. The Committee was represented by Justice Mbogholi Msagha, Justice David Majanja, Hon. Roseline Oganyo and Hon. Lillian Arika.

At the meeting, it was reported that the Carter Center was founded in 1982 and works as a NGO. It has had operations in Kenya for many years as a launching station for work on Somalia. The centre has had international election observation missions in respect of 94 elections in over 37 countries over its lifetime.

For these elections, they were invited and accredited by the IEBC as observers. The Carter Centre Associate Director, Dr. Pottie, reported that their methodology consists of long term and short term observation i.e. holding meetings with stakeholders in the countries where they are operating regardless of their ideology. Their focus has been on countries that have had civil war or which are going through a major constitutional change such as Kenya. They also assess an election based on a country’s own obligations, which was particularly relevant since international legal commitments are part of the Kenyan legal framework. It was further reported that in order to remain accountable, the Carter Center assesses elections against a framework that the country has already established rather than what has been imposed from abroad.

In relation to the 2013 elections, the team reported that their view was largely consistent with that expressed by national and international observers and national commentary. The Carter Center EOM was largely pleased both with the legal framework for the conduct of the elections as well as the procedural preparations. It was their
finding that the established legal and institutional mechanisms were pursued as a whole. Overall, the Carter Center was very impressed with the work of the Committee and the institutional reforms and the team expressed hope that the building of confidence in the Judiciary will continue.

Engagement with LSK

The Committee has previously engaged with the LSK in the conduct of Continuous Legal Education (CLE) programmes on elections prior to the general elections. These seminars were critical in sensitizing the advocates about the new electoral regime and the preparedness of the Judiciary for the electoral dispute resolution process. They also served as a good forum for the Judiciary to caution the legal fraternity against any attempts to derail the timely resolution of election disputes as has happened in the past.

Though engagement with stakeholders such as the LSK was limited during the post-election phase of the Committee’s work, the Committee held a meeting with LSK in March 2013 to discuss the publication of a handbook on elections. The LSK engaged several advocates who are widely published to write articles for this handbook. This handbook will contain a review of the handling of election-related matters and include a review of the recently decided cases touching on the electoral process. The handbook is expected to be released later this year.
Technical Retreat on M & E at Kilaguni Lodge- Maanzoni

Files from some of the petitions filed in 2013
MONITORING AND EVALUATION

It is no surprise that many people resist the arduous effort involved in continually monitoring and revising their thinking... Yet if all the energy required to think seems troublesome, the lack of thinking causes far more trouble and conflict for ourselves as individuals and for the society in which we live. – M Scott Peck

Following the 4th March 2013 General Elections, election petitions arising from the county and parliamentary elections were to be filed within 28 days of publication of the election results in the Kenya Gazette. However, it is important to note that this stand point under Section 76 (1) (a) of the Elections Act, 2011 has been highly contested and debated upon.

Due to the increased number of electoral seats created by the Constitution and given the fact that six different elections were conducted on the same day, it had been anticipated that there would be over 500 petitions. In reality, however, a total of 188 election petitions were filed throughout the country in the wake of the elections. The reduced number of petitions showed increased confidence in the electoral process and reflected public satisfaction with the manner in which the elections had been conducted.

The Chief Justice, in accordance with the provisions of the Elections (Parliamentary and County Elections) Petition Rules 2013, selected the bench to hear election petitions and the list of the various election courts was published in the Kenya Gazette and national newspapers. The list was also posted on the Judiciary website.

Since the hearing of petitions begun, the select bench has been keen on adherence to the strict timelines that are set by the Constitution. Kenyans are watching in anticipation to see whether the Judiciary will be able to handle all the petitions within the time
frame of 6 months. This is especially so because most of the petitioners are seeking scrutiny and re-tallying, orders which, if granted, may take time to conclude. It would set a positive precedent for Kenya if all the petitions are concluded by October 2013 as stipulated in the Constitution. It will also form part of best practices for other countries to emulate in relation to the handling of election petitions. It is noteworthy that Ghana, a country with similar electoral laws and procedures and which also conducted elections in the year 2013, is looking to the Kenyan situation to provide guidance on electoral dispute resolution in their country.

After the General Elections, the JWCEP started preparing for the weighty task ahead, that of monitoring and evaluation of the handling of election petitions. The 28-day timeline set out for the filing of petitions lapsed on the 10th of April 2013. The monitoring and evaluation of cases is a very critical part of the mandate of the JWCEP.

As part of administrative arrangements, implementation is the most crucial part under the JWCEP’s Terms of Reference. The research team embarked on coming up with a synopsis of election petitions that had so far been filed noting, as stated above, that the last day for filing petitions was April 10, 2013. At the end of each day, the researchers sent the updated table to the JWCEP CEO to forward to other Committee Members.

The JWCEP researchers also received duplicate copies of the election petitions filed and verified the case numbers and particulars of each case, comparing them with the Case Management System to confirm accuracy. The list of election petitions filed helped a great deal in publishing the names of the Judges and Magistrates selected to handle election petitions in the Kenya Gazette. The summary table of petitions and orders sought was also used in the colloquium for the selected bench.
Challenges in Monitoring and Evaluation (M & E) of Election Petitions

Noting that the purpose of Monitoring and Evaluation of election petitions is to take statistics of petitions filed and gauge the efficiency and performance of the election bench, the JWCEP embarked on various pertinent activities after the 4th March 2013 General Election. This section identifies the major challenges that have been encountered by the Committee in the monitoring of election petitions and evaluating the effectiveness of various approaches taken during this period. A summative evaluation incorporating a longer term perspective will be included in the final JWCEP report after the conclusion of the formal M&E. The challenge is to develop internal M&E capacity within the Judiciary.

1. The E-Based Case Management System (CMS)
   - The ICT Officers who were to manage the e-based Case Management System on election petitions lacked the requisite legal knowledge and hence it was a challenge for them to update the proceedings as they confused legal terms and procedures.
   - Some ICT Officers did not update the proceedings of petitions in their stations on time and hence the JWCEP Secretariat could not depend solely on the information in the CMS as was originally intended. As a result, the Committee had to call in Legal Researchers, Deputy Registrars or Executive Officers in such stations.
   - Some stations such as Garissa and Wajir suffered from lack of Internet access because of network connection problems. Therefore, it was almost impossible for the ICT Officers there to update the CMS on proceedings of petitions in these stations. The case management system was not accessible to the Committee members and to the staff of the Secretariat save for the M&E coordinator.
2. Lack of Internal M & E Expert

It was difficult to get an M & E expert who also had the requisite legal experience or knowledge. This was a major challenge for the JWCEP Secretariat as M & E is an on-going process. However, despite this challenge, the Secretariat worked hard to come up with a number of M & E tools which have worked well so far.

From this challenge, the lesson learnt by the JWCEP is that it will be best for the next Committee on Election Preparations to source for an M & E consultant right from the commencement of its work. The Committee recommends that the Judiciary develops internal M & E capacity for similar activities in the future.

3. Inadequate Funds

The JWCEP had come up with an M & E work plan and budget. In the plan, the Committee Members with the help of the Secretariat were to go round all the Court Stations handling election petitions conducting interviews, focus group discussions and administering questionnaires. This was to be done on a monthly basis by at least two Committee Members and some members of the JWCEP Secretariat at any particular time. The exercise would be for the purposes of collecting information on the disposal of election petitions, identifying challenges encountered and coming up with solutions for the same. The information collected would then act as a yardstick for measuring the Committee’s work and deciphering challenges and successes of various administrative and legal approaches taken. This would also form part of the lessons learnt and be the basis for coming up with recommendations for future Committees.
However, as much as the work plan on M & E was well thought out, the JWCEP lacked funds at the time to see it through to fulfilment. Though it will still be applied towards the end of the Committee’s work, it would have also been productive to embark on the M & E plan during the whole 6 months period within which election petitions are to be heard and finally determined.

4. Election Petitions Update Table

The JWCEP legal researchers came up with the Election Petitions Update Table in order to supplement the e-based Case Management System. However, as much as the update table was meant to supplement the CMS, it became the only reliable source of information on the progress of election petitions. The JWCEP Secretariat also gathered all the rulings delivered each week and forwarded them to the select bench and legal researchers.

Due to the failure of the CMS, the updating of the tables was challenging as the Secretariat had to resort to making calls to stations to get information from contact persons who were often not available due to their busy schedules. Because of this there was delay in getting up to date information. Further, legal researchers had to verify information given by ICT officers which made the exercise overwhelming considering the fact that each legal researcher was following up on up to 38 petitions. Due to the constant updating of the info from JWCEP and DPAC, the information given to the public through the media has been fairly accurate.
The advocates at the reading of the judgment in Nairobi Election Petition No. 2 of 2013

The petitioner, Steven Kariuki arriving for the reading of the judgment in Nairobi EP 2 of 2013
CHAPTER 5

ENGAGEMENT WITH THE PUBLIC

Once social change begins, it cannot be reversed. You cannot uneducate the person who has learned to read. You cannot humiliate the person who feels pride. You cannot oppress the people who are not afraid anymore. We have seen the future, and the future is ours. – Cesar Chavez

The JWCEP is required to, among other things, advice the Judiciary on information that needs to be disseminated to the public and avenues that are available for the resolution of disputes and the approaches to be employed.

Prior to the conduct of the March 2013 general elections, engagement with the public was especially important because the violence that succeeded the last general elections was largely attributed to the lack of public confidence in existing dispute resolution mechanisms and the Judiciary in particular. The need to raise public confidence in the ability of the Judiciary to resolve any disputes that would arise from the elections thus informed the public engagement agenda.

Therefore, prior to the elections, the Judiciary actively participated in public forums and explained to the public the various dispute resolution avenues that exist in our current electoral regime. In particular, the JWCEP emphasized the preparation activities of the Judiciary for the electoral dispute resolution process with the aim of increasing public confidence in the workings of the transformed Judiciary.

One example of this is the forum that was organized by the Hindu Council of Kenya on February 27, 2013 at the Visa Oshwal Auditorium in Westlands. Members of the Hindu community were keen to hear about the preparedness of the Judiciary ahead of the general elections. The JWCEP was represented at that meeting by Justice Ibrahim, Justice Majanja and Hon. Roseline Oganyo. Those present gave
useful insights and shared some practices from the Indian Judiciary. They cited for example the existence of night courts in India for the poor who cannot access the courts during the day and which, they said, had really served to improve access to justice. This was proposed as one of the innovative lessons that Kenya could borrow from India.

The JWCEP undertook in its last report to continue informing the public of its activities through infomercials, editorial supplements and talk shows. In the wake of the elections, the JWCEP published several press releases on the number of cases filed to challenge the validity of the elections and the electoral posts to which they related.

Thereafter, the JWCEP published, both in national newspapers with wide circulation and on the Judiciary website, information on the judicial officers who had been selected by the Chief Justice to handle the petitions and the court stations where the cases would be heard. This was done with the aim of promoting access to justice and transparency in the electoral dispute resolution process.

Members of the JWCEP also took part in the preparation of a documentary on the elections prepared by the DPAC. The documentary focused on the role of the Judiciary in the electoral process, the challenges faced and the lessons learnt for future electoral processes. The production of the documentary is part of the ongoing efforts by the JWCEP to keep the public informed on its work and to welcome public participation on how it can be improved.

In conjunction with the DPAC, the JWCEP continues to prepare and publish frequent press releases to keep the public informed on the progress of the 188 petitions filed after the 2013 general elections. That is in accordance with Article 10 of the Constitution, which requires transparency and accountability in the management of public affairs.
The media has been particularly helpful through its role of publicising information for the public. It has constantly kept the public abreast of the progress in all election related matters, including the election petitions and their outcomes.
Hon. Omange advising on the logistical arrangements for hearing petitions

Kakai Kissinger, DCRJ reporting on administrative arrangements at the colloquium
Background

The JWCEP is tasked with among other things, advising the Judiciary on the legal and administrative arrangements for the efficient disposal of election related disputes. The bulk of the work of the JWCEP under this mandate was preparatory and was done in the run-up to the elections. The work done under this term of reference went a long way in laying the ground work for the hearing and determination of election petitions in 2013.

At present, the Committee is in the process of monitoring areas of the law that are critical to the advancement of election dispute resolution both now, and in the future.

In the previous reports, the work of the Committee in the development of rules and amendments to the Elections Act was highlighted. Now that the electoral laws are in operation, the loopholes in the law are being identified. A good example of this is the requirement under Article 87 (2) of the Constitution that election petitions be filed within 28 days of declaration of the results by the IEBC. The consensus appears
to be that this period is calculated from the date of publication in the Kenya Gazette as is provided for in section 76 of the Elections Act. There is however no requirement that the IEBC publish the results within a given period. Moreover, what was published by the IEBC in relation to the March 2013 was the names of the persons elected and not the results. There has been a lot of litigation surrounding this issue, a clear indication that the law needs to be clarified.

At the same time, there have been other developments in electoral law. The jurisprudence has been enriched with Judges coming up with reform proposals. Some of these proposals include the following:

- Making provision for transfer of a petition that has been filed in the wrong court.
- The rules should remove reference to copy of summons in EP3 as there is no requirement either under the Act or the Rules that summons be served on respondents in addition to the petition.
- Section 2 of the Elections Act which defines an election court should have the jurisdiction of the High Court make reference to Article 165 (3) (e) and 105 of the Constitution rather than 165 (3) (a).
- The inconsistency between section 76 and rule 13 should also be corrected so that it is clear that service of the petition is to be effected within 15 days of the filing rather than 14 days.
- The provisions in rule 29 concerning abatement also needs to be rectified/clarified.

**Administrative Arrangements**

The main administrative arrangements undertaken with the advice of the JWCEP was the designation of election courts to handle the 188 petitions filed in the wake of the elections. This involved a delicate balance between the need to designate sufficient numbers of judicial officers to hear and determine the petitions within the stipulated timelines and the need to ensure that other court processes are not crippled by the dispute resolution process. The list of cases filed and the elective posts to which they related which had been prepared by the legal research team was particularly useful in this regard, as it indicated where more than one petition had been filed in respect of the same election. This formed a basis for the designation of the same judicial officer to handle such cases as it was anticipated that they would later be consolidated.

JWCEP worked with the office of the CJ to designate and gazette the judges and magistrates to hear election petitions. Arrangements were made to ensure that there were ICT officers, legal researchers, clerks and secretaries available in various courts to assist the magistrates and judges. The staff were required to update and disseminate information daily regarding election petition. The info included mentions, hearing dates, rulings, and judgments among others. JWCEP compiled all this info to assist in the process of monitoring and evaluation. The information includes but is not limited to rulings, mentions, new hearing dates and petitions that have been struck out, among others. JWCEP compiles this information to assist in the process of monitoring and evaluation.
The rules require that election petitions be heard on a day-to-day with minimal adjournments to ensure expeditious disposal. JWCEP monitored all these cases to ensure that they were determined on time. Whenever any administrative interventions were required, the JWCEP was able to assist.

JWCEP aims at helping the Judiciary to improve its ability to manage electoral processes in Kenya. This is through building the legal capacity of the institutions that deal with these petitions. The Committee has also sought to identify the legal gaps and thereby make proposals and also develop rules of procedure.

While most of the work of the JWCEP is focused on post election dispute resolution, the areas that require some attention in future include:

- Enhancing and empowering alternative dispute resolution processes.
- Pre-election nomination disputes including party nomination disputes.
- Disputes arising from party list seats under Article 199 of the Constitution.

The following challenges were faced in the resolution of election disputes:

i. The timelines set for the resolution of election disputes was fixed at 6 months by the Constitution

ii. The number of disputes filed from different places.

iii. The number of judicial officers involved in hearing election disputes
Nairobi Governor, Dr. Evans Kidero, celebrating his victory in an election petition lodged against him.

Nairobi Governor aspirant, Ferdinand Waititu, after the reading of the judgment of an election petition against Dr. Evans Kidero

Judge George Kanyi Kimondo reading the judgment in Nairobi Election Petition 2 of 2013.
Supreme Court Judges

George Mike Wanjohi & his supporters after the reading of the judgment.

Carter Mission representative handing over the pre-release of the Election Observer Mission (EOM) report to Justice David Majanja of the JWCEP
ANNEXES
The development of sound jurisprudence that is faithful to the Constitution remains central to the Judiciary transformation process. The Judiciary Transformation Framework states that it is sound jurisprudence that enables the Judiciary to assert its authority, command regard and distinction among its peers and earn respect and legitimacy in the eyes of the public. In part fulfilment of the commitment to engagement with the public and promote the growth of jurisprudence, the Chief Justice handed over material used at the hearing of the presidential election petition to deans of law schools on the 6th of September 2013. In the words of the Chief Justice:

*Our intention today is not to reopen the case - that is not possible. Rather, it is to launch a robust debate and lifelong scholarly inquiry on the cases and the decisions that flowed from them. This evaluation should include an assessment of the performance of the Bench as well as the Bar, the quality of the advocacy as well as that of the judging. Through this engagement, the Supreme Court, and indeed the Judiciary, is inviting constructive research and reflections on its decisions and processes not so much to re-litigate issues it has already determined with finality but rather to explore and expand the frontiers of knowledge for the benefit of current and future Supreme Court and Judiciary. It is only through constant engagement that we can build public confidence in Kenya’s justice system.*

The electoral dispute resolution process in 2013 has given the courts an opportunity to develop jurisprudence underpinned by the Constitution and its principles and values. The entrenchment of important electoral principles in the Constitution, the enactment of the Elections Act, 2011 and the Rules of Procedure and the incorporation of international legal principles by the Constitution have provided a firm foundation for the growth of jurisprudence in this area of law.

So far, decisions have been delivered setting the record clear on issues such as: the constitutionality of Section 76 of the Elections Act, 2011, the declaration date of election results and the deadline for the date of filing; security for costs; judicial scrutiny; the meaning of free and fair elections; determination of costs; interlocutory appeals, and the validity of elections. The decisions delivered so far have drawn from precedents in other parts of the world and international legal instruments.

The following are some of the precedent-setting quotes that can be gleaned from the some of the election courts in 2013:
THE SUPREME COURT ON TIME

“The parties have a duty to ensure they comply with their respective time – lines, and the Court must adhere to its own. There must be a fair and level playing field so that no party or the Court loses the time that he/she/it is entitled to, and no extra burden should be imposed on any party, or the Court, as a result of omissions or inadvertences which were foreseeable or could have been avoided.”

The Supreme Court in its ruling on the petitioner’s affidavit in reply delivered on the 26th of March stated at page 9.

THE COURT OF APPEAL ON INTERLOCUTORY APPEALS

“It is our considered view that passage or lapse of time does not and cannot confer jurisdiction; jurisdiction is a continuum, jurisdiction cannot lack today and by passage or lapse of time exist tomorrow. Jurisdiction is either present ab-initio or absent forever. We find that Rule 35 of the Election Petition Rules does not oust the jurisdiction of the Court of Appeal to hear interlocutory appeals. We also find that it is not only upon final judgment or decree of the High Court being made, that the Court of Appeal acquires or assumes jurisdiction. A judgment and decree of the High Court cannot ipso facto confer or vest jurisdiction to the Court of Appeal. We are of the considered view that the Court of Appeal always has jurisdiction to hear appeals in interlocutory matters arising in an Election Petition; and that it is only that the jurisdiction to hear such a matter is delayed or deferred and not ousted. The issue is not absence of jurisdiction but deferred or delayed jurisdiction. It is our considered view that Section 80 (3) of the Elections Act does not oust the jurisdiction of the Court of Appeal to hear interlocutory matters of law arising in an Election Petition; rather, the section must be read with Articles 105 and 164 (3) of the Constitution. Section 80(3) in the context of Articles 105 and 164 (3) of the Constitution simply delays the exercise of the appellate jurisdiction to such a time when the constitutional time lines for hearing and determining an Election Petition by the High Court has expired. In this context, we hold that any and all interlocutory appeals that could be preferred in an Election Petition are deferred and delayed and should be raised as grounds of appeal in any substantive Election Petition Appeal.”

Per Visram, Koome & Otieno-Odek, JJ.A.) in the Court of Appeal in Nyeri in Peter Gichuki King’ara v. IEBC & Others Civil Appeal No. 23 of 2013

“The practice of appealing against interlocutory decisions in the final judgment is not unknown to our jurisdiction. It is the order of the day in criminal cases, where interlocutory determinations in the course of the trial are raised on appeal after conclusion of the trial. The concern may be addressed by formulation of procedural rules specific to election petitions. In addition, in view of what we have held above, particularly about the constitutional rights and values, we do not see how the Court of Appeal Rules can stand on the way of an appellant who wishes to address, in an appeal after the final disposal of a petition, a determination that was made in an interlocutory stage. All that is required is purposive interpretation of the rules to ensure that the appellant’s constitutional right to raise an issue that was determined in the interlocutory stage is protected.”

Per Nambuye, Kariuki, Gatembu, M’Inoti and Murgor JJA in Jared Odoyo Okello & Others v IEBC and Others Nairobi Civil Appeal No. 16 & 19 of 2013 (Consolidated)

“Under our democratic form of government, an election is the ultimate expression of sovereignty of the people and the electoral system is designed to ascertain and implement
the will of the people. The bedrock principle of election dispute resolution is to ascertain the intent of the voters and to give it effect whenever possible.”

Per Majanja J. in Richard Kalembe Ndile v. Patrick Musimba Mweu & Others Machakos Election Petition 1 of 2013

PRE-TRIAL CONFERENCING

“Rule 17 of the Election Rules provides for pre-trial conference and prohibition of delayed interlocutory applications. This rule, in my view, is a measure to safeguard the adjudication process of an election petition from interlocutory applications made after the commencement of the hearing. The rule also ensures that both the court and the parties narrow down to the contested issues and adopt the best and [most] practical way of resolving the disputes.”

Per Ogolla J. in Arthur Kibira Apungu & Others v. IEBC & Others, Kakamega Election Petition 7 of 2013

MEANING OF DECLARATION OF ELECTION

The meaning of ‘declaration’ as used in Article 87 (2) of the Constitution and section 76 of the Elections Act:

“In the absence of a clear picture emerging from both the Constitution and the Act with respect to what constitutes a “declaration”, the law is that the purpose of legislation must be looked at to see whether or not it is unconstitutional. In my view, the insertion of gazettement in section 76(1)(a) of the Act was meant to give certainty to reckoning of time. That being the position and pursuant to my finding that one of the intention of the framers of the Constitution was to give certainty to electoral dispute resolution mechanisms, I am unable to find that by merely requiring that the results be gazetted, section 76(1)(a) is unconstitutional on that score. In fact, I doubt if this Summons would have been taken if the gazettement had been done on the very day that the results were announced by the Returning Officer.”

Per Odunga J. in Gideon Mwangangi Wambua v. IEBC & Others (Mombasa Election Petition 4 of 2013)

“The Applicants have asked the court to find that declaration has the meaning attached to it under Regulations 79 and 83. In my view the declaration that is referred to in Regulations 79 and 83 is in respect of particular polling stations and tallying centres. What this means is that if ‘declaration’ were to be taken to mean the issuance of the forms, it would have the effect of creating several declaration dates, which would result in an absurdity. It could not have been the intention of the drafters of the Constitution that it be interpreted in a manner that would result in an absurdity. Indeed this is contrary to the purposive approach that is required to be adopted in relation to Constitutional interpretation. Indeed the publication of the results in the Kenya Gazette provides a uniform reference point for assessing when the jurisdiction of the IEBC ends and that of the High Court begins, as provided for in the Constitution. In my view the insertion of gazettement in section 76(1)(a) of the Act was meant to give certainty and uniformity to reckoning of time. It was not meant to create a parallel time frame or a contradiction to the Constitution. I am unable to find that by merely requiring that the results be gazetted, section 76(1)(a) is unconstitutional on that score.”

Per Lesiit J. in Mercy Kiriton Mutegi v. Beatrice Nkatha & Others (Meru Election Petition 5 of 2013)
SCRUTINY

“Form 35 is meant to be a snapshot of the votes cast. Its contents are then transposed into Form 36 that captures the constituency total tallies for all the candidates. When Form 35 is then impugned, a full inquiry must extend to the ballot box.”

Per Kimondo J. in Kakuta Maimai v. Peris Pesi Tobiko & 2 Others (Nairobi Election Petition 5 of 2013)

“The importance of scrutiny in an election petition cannot be gainsaid. This is because under … the Election Petition Rules, the court now has jurisdiction to declare a petitioner to have been validly elected. This is in a situation where the court establishes that it is the petitioner who actually won the election and not the Respondent. I agree … that the court cannot declare a petitioner as having been duly elected without scrutiny. Scrutiny and recount therefore can be used by the court as a basis of declaring a petitioner as having been duly elected in the position that is the subject of the election petition.”

Per Kimaru J. in Rishad Hamid Ahmed Amana v. IEBC & Others Malindi Election Petition 6 of 2013 (2013) eKLR.

“Having said so, the petitioner must shoulder the blame for failing to seek a recount at the polls… The point to be made is that Courts are ill-equipped to carry out a recount. It is a laborious and time-consuming exercise. The polling stations provide a better forum, soon after close of polls, and in the presence of agents or candidates. In that scenario a fairly smaller number of votes would be recounted.”

Per Kimondo J. in Kakuta Maimai v. Peris Pesi Tobiko & 2 Others (Nairobi Election Petition 5 of 2013)

“…a party must not be allowed to use scrutiny as a fishing expedition to discover new or fresh evidence. It would be expected that a party filing an Election Petition is, from the outset, seized of the grounds, facts and evidence for questioning the validity of an election. And where the evidence is unclear then a party can, on application to Court, seek and obtain better particulars of that evidence from its adversary. But it would be an abuse of process to allow a party to use scrutiny for purposes of chancing on new evidence. Scrutiny should not be looked upon as a lottery.”

Per Tuiyott J. in Philip Osore Ogutu v. IEBC & Other (Busia Election Petition 1 of 2013)

“The Learned Judge went further to state, correctly in my view, that scrutiny should not afford a petitioner the opportunity to embark on a fishing expedition to discover new or fresh evidence. In this regard, scrutiny cannot be ordered where the petitioner has not specifically pleaded for scrutiny in his petition. It will not do for the petitioner to aver in the petition that he desires scrutiny and recount to be undertaken in respect of all the polling stations in the electoral area that is the subject of the dispute. The petitioner must plead in sufficient detail why he requires the court’s intervention to order scrutiny. In that regard, the petitioner is required to state the specific polling stations that he alleges there were irregularities and
therefore should be scrutinized… This court agrees with the Respondents that the Petitioner can only ask for scrutiny and recount in respect of polling stations which he specifically pleaded in his petition. A party is bound by his pleadings.”

Per Kimaru J. in Rishad Hamid Amana v. IEBC & Others Malindi Election Petition No. 6 of 2013 (2013) eKLR:

THE ROLE OF FORM 35 IN AN ELECTION

“The returning officer in the tallying centre announces results from the various polling centres in the constituency. Those results are contained in Form 35. Form 35 is a snapshot of the contents of the ballot box as documented by presiding officers and verified by agents. Form 35 in my view is the most important primary record of the election. All the other forms are built atop it. The sealed ballot boxes delivered to the returning officer cannot be reopened except by an order of the election court.”

Per Kimondo J. in Steven Kariuki v. George Mike Wanjohi & Others Nairobi Election Petition 2 of 2013:

COSTS IN ELECTION PETITIONS

“One other issue calls for my observation. The 3rd Respondent has repeatedly asserted that this Petition is brought by the Petitioner as a proxy of some named principals. The 3rd Respondent will have to prove those allegations. Needless to say, no adverse finding can be made against the so-called principals without affording them an opportunity of answering the allegations. But in the event that the proxy arrangement were to be proved and the Petition fails, then a fair question would be whether the Respondents should have a remedy of costs against the “principals.” It is the suggestion of this Court, without pretending to provide a final answer, that Rule 36(1) of the Election Petition (Parliamentary and County Elections) Petition Rules 2013 is wide enough to enable a Court direct an order of costs against such persons… The use of the word “persons” and not “party” is, in my view, deliberate. In appropriate circumstances, persons other than the Petitioner/s or the Respondents may be subjected to costs. There is no reason why the actual owner of a failed Petition should be left unpunished. This would be one way of deterring the abuse of Court process. And this may yet be another way of addressing the 3rd Respondent’s fears.”

Per Tuiyott J. in Henry Okello Nadimo v. IEBC & Other Busia H. C. Election Petition 2 of 2013

FREE AND FAIR ELECTIONS

“Lack of the counterfoils is therefore grave as the ballot papers in the ballot boxes cannot be ascertained and verified if indeed they were duly cast as votes or not. Missing counterfoils would basically mean that ballot papers in ballot boxes were not the ones used by the voters.”

Per Mutende J. in Thomas Malinda Musau & Others v. IEBC & Others (Machakos Election Petition 2 of 2013)
TRANSFER OF PETITIONS FILED IN THE WRONG COURT

“Is the High Court devoid of jurisdiction to transfer this case to the proper court for determination? The answer to this question should be seen within the authority of the High Court to transfer cases as a jurisdiction by itself. I hold the view that, the jurisdiction to transfer cases ordinarily resides in a superior court; in this case it is the High Court. Unlike in purely private civil claims, the jurisdiction should be broadly exercised in public-law-remedy proceedings depending on the circumstances of each case. I am not able to find any express limitation on that kind of exercise of that jurisdiction in the Constitution or a statute or a charter that Kenya has ratified. Nor has it been ousted, expressly or by necessary implication by the Constitution or Elections Act or the Rules… That power, it bears repeating, is a constitutional power vested in the High Court, and should not be limited by a practice of by-gone years: which is out of tune with our Constitution. What is imperative is for the court to pay homage to the Constitution by developing strong deprecation against any position that negates the demands of the Constitution. It is this kind of legal evolution that is necessary in any country that is advancing in the polity of legal, socio-political and economic realities.”

Per Gikonyo J. in Miliah Nanyokia Masungo v. Robert Wekesa & Others Bungoma High Court Election Petition 1 of 2013.

“In this case, it is regrettable that the parties, by curtailing the calling of witnesses, have conducted their cases in such a manner, as to make the testing of evidence difficult. Yet clarity of the court as to all matters that transpired is critical. The object of the Elections Petitions Rules is not to create a field for the display and testing of strategy and tactic games by parties. The overriding objective of the Rules is stated in Rules 4 as being to facilitate the just, expeditious, proportional and affordable resolution of election petitions. Likewise, the duty of the court is to further the overriding objectives by conducting the proceedings with the aims of just determination of a petition in an efficient and expeditious manner.”

Per Mwongo J. in Ferdinard Waititu v. IEBC & Others Nairobi Election Petition 1 of 2013

WHETHER TO ORDER FOR A BY-ELECTION

“While I agree that the result of the recount and scrutiny is not the only consideration to be taken into account in deciding whether or not to declare the petitioner entitled to the much coveted seat, as indeed I pointed out to the parties after the results of the recount and scrutiny were made known, I am aware that each case must be decided on its own circumstances. I am aware that mounting and conducting an election is not a cheap affair. Elections are not fuelled by water or air. They are fuelled by cash that must come from the public coffers through taxation. It is public knowledge that the Kenyan taxpayer is extremely overtaxed, and that taxpayer includes the Kerubos, the Wanjikus and the Nafulas of this County. Where it appears, as indeed it does appear to me in this case, that the outcome of this petition has reflected the will of the people of Bonchari Constituency in the choice of their member of the National Assembly, I see no reason for punishing the taxpayer a second time.”

Per Sitati J., in John Oyoo Oyioka and Another v IEBC and Others Kisii Petitions Nos. 2 & 4 of 2013 [2013]eKLR
The Supreme Court is the only court vested with jurisdiction to hear and determine disputes relating to the presidential elections. The Supreme Court clarified its jurisdiction in relation to election petitions in its Advisory Opinion No. 2 of 2012 (In the Matter of the Principle of Gender Representation in the National Assembly and the Senate). The court ruled that any issue relating to the election of the President, including disputes as to nomination or qualification to vie for election are to be determined by the Supreme Court.

The Constitution provides that petitions challenging the election of the President have to be filed within 7 days of the declaration of the results. The Supreme Court is required to resolve any dispute filed within 14 days of filing. In addition to the Constitution, the hearing and determination of a presidential election petition at the Supreme Court is governed by the Supreme Court (Presidential Election Petition) Rules, 2013 which were published at the beginning of the year. These rules set out the timelines for the entire dispute resolution process.

The presidential election petition was the first of its kind under the Constitution and the new electoral laws. It was also the first ever presidential election petition in Kenya to be heard and determined on merit. In the past, presidential election petitions were dismissed on technicalities and were never heard on merit. The petition was presided over by the Hon. Chief Justice, Dr. Willy Mutunga, who is also the President of the Supreme Court as head of a bench of the entire Supreme Court comprising Justice P.K. Tunoi, Justice M. K. Ibrahim, Justice J. B. Ojwang, Justice S. C. Wanjala and Justice N. S. Ndung’u.

Three petitions were filed after the declaration of the results of the 2013 presidential elections. The consolidated petitions filed were as follows: Moses Kiarie Kuria & 2 Others v. Ahmed Issack Hassan & IEBC (Petition 3 of 2013), (Gladwell Wathoni Otieno & Zahid Rajan v Ahmed Issack Hassan & 3 Others) Petition 4 of 2013 & Raila Odinga v. IEBC & 3 Others (Petition 5 of 2013).

The Court gave its ruling on the 30th of March 2013, with the reasons for the decision being delivered on the 16th of April 2013.

Supreme Court Rulings on Preliminary Matters

Before the petition could be heard on merit, certain preliminary matters arose. These included the *suo moto* directives to assert the court’s authority, rulings on *amicus curiae* applications, a ruling disallowing a further affidavit, ruling dismissing an application for production of infrastructure and a ruling dismissing a notice to produce. Most of these preliminary issues had implications on the time-limits imposed on the court by the Constitution.

ANNEX 2

HIGHLIGHTS OF THE PRESIDENTIAL ELECTION PETITION 2013

The Supreme Court is the only court vested with jurisdiction to hear and determine disputes relating to the presidential elections. The Supreme Court clarified its jurisdiction in relation to election petitions in its *Advisory Opinion No. 2 of 2012 (In the Matter of the Principle of Gender Representation in the National Assembly and the Senate).* The court ruled that any issue relating to the election of the President, including disputes as to nomination or qualification to vie for election are to be determined by the Supreme Court.

The Constitution provides that petitions challenging the election of the President have to be filed within 7 days of the declaration of the results. The Supreme Court is required to resolve any dispute filed within 14 days of filing. In addition to the Constitution, the hearing and determination of a presidential election petition at the Supreme Court is governed by the Supreme Court (Presidential Election Petition) Rules, 2013 which were published at the beginning of the year. These rules set out the timelines for the entire dispute resolution process.

The presidential election petition was the first of its kind under the Constitution and the new electoral laws. It was also the first ever presidential election petition in Kenya to be heard and determined on merit. In the past, presidential election petitions were dismissed on technicalities and were never heard on merit. The petition was presided over by the Hon. Chief Justice, Dr. Willy Mutunga, who is also the President of the Supreme Court as head of a bench of the entire Supreme Court comprising Justice P.K. Tunoi, Justice M. K. Ibrahim, Justice J. B. Ojwang, Justice S. C. Wanjala and Justice N. S. Ndung’u.

Three petitions were filed after the declaration of the results of the 2013 presidential elections. The consolidated petitions filed were as follows: Moses Kiarie Kuria & 2 Others v. Ahmed Issack Hassan & IEBC (Petition 3 of 2013), (Gladwell Wathoni Otieno & Zahid Rajan v Ahmed Issack Hassan & 3 Others) Petition 4 of 2013 & Raila Odinga v. IEBC & 3 Others (Petition 5 of 2013).

The Court gave its ruling on the 30th of March 2013, with the reasons for the decision being delivered on the 16th of April 2013.

Supreme Court Rulings on Preliminary Matters

Before the petition could be heard on merit, certain preliminary matters arose. These included the *suo moto* directives to assert the court’s authority, rulings on *amicus curiae* applications, a ruling disallowing a further affidavit, ruling dismissing an application for production of infrastructure and a ruling dismissing a notice to produce. Most of these preliminary issues had implications on the time-limits imposed on the court by the Constitution.
Legal Principles
The decisions of the Court raised and dealt with various issues that have contributed to the development of electoral jurisprudence. The following is a synopsis of some of the issues that the court dealt with.

Burden and Standard of Proof
The Supreme Court clarified the standing of Kenyan courts on the issue of standard and burden of proof in election petitions. In the words of the Court:

“There is, apparently, a common thread in the foregoing comparative jurisprudence on burden of proof in election cases. Its essence is that an electoral cause is established much in the same way as a civil cause: the legal burden rests on the petitioner, but, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting. Ultimately, of course, it falls to the Court to determine whether a firm and unanswered case has been made… To what standard must such initial burden be discharged…? This Court should freely determine its standard of proof, on the basis of the principles of the Constitution, and of its concern to give fulfilment to the safeguarded electoral rights. As the public body responsible for elections, like other public agencies, [it] is subject to the “national values and principles of governance” declared in the Constitution [Article 10]. Judicial practice must not make it burdensome to enforce the principles of properly-conducted elections, which give fulfilment to the right of franchise…The threshold of proof should, in principle, be above the balance of probability, though not as high as beyond-reasonable-doubt–save that this would not affect the normal standards where criminal charges linked to an election are in question. In the case of data-specific electoral requirements (such as those specified in Article 38(4) of the Constitution, for an outright win in the Presidential election), the party bearing the legal burden of proof must discharge it beyond any reasonable doubt.”

The Supreme Court was also commended for its handling of the pre-trial conferencing procedure which was introduced by Rule 10 of the Supreme Court (Presidential Election Petition) Rules. The Court emphasized the importance of control over the entire process of electoral dispute resolution, which can be achieved through the pre-trial conference where all the issues and directions relevant to the expeditious resolution of the dispute are addressed. The Supreme Court encouraged the use of the pre-trial conference as a stage in the dispute resolution process.

Undue Regard to Procedural Technicalities
The decision of the Court has also been given a nod for its determination on the issue of technicalities vis-à-vis substantive justice. The Court’s finding was to the effect that in interpreting Article 159 (2) (d) of the Constitution, the Court must appreciate all the relevant circumstances and the requirements of a particular case and conscientiously determine the best course. The Court’s determination in the Supreme Court was not intended to apply in every case; courts are at liberty to determine whether to uphold technicality or substantive justice based on the peculiar circumstances of each case.

In the words of the Court:

“The essence of that provision is that a Court of law should not allow the prescriptions of procedure and form to trump the primary object, of dispensing substantive justice
to the parties. This principle of merit, however, in our opinion, bears no meaning cast-in-stone and which suits all situations of dispute resolution. On the contrary, the Court as an agency of the processes of justice, is called upon to appreciate all the relevant circumstances and the requirements of a particular case, and conscientiously determine the best course. The time-lines for the lodgement of evidence, in a case such as this, the scheme of which is well laid-out in the Constitution, were in our view, most material to the opportunity to accord the parties a fair hearing, and to dispose of the grievances in a judicial manner. Moreover, the Constitution, for purposes of interpretation, must be read as one whole: and in this regard, the terms of Article 159(2)(d) are not to be held to apply in a manner that ousts the provisions of Article 140, as regards the fourteen-day limit within which a petition challenging the election of a President is to be heard and determined.”

Irregularities in the Electoral Process

The SC in its decision dealt with the issue of technicalities vis a vis substantive justice and the interpretation of Article 159 (2) (d) of the Constitution. It stated.

“Although, as we find, there were many irregularities in the data and information-capture during the registration process, these were not so substantial as to affect the credibility of the electoral process; and besides, no credible evidence was adduced to show that such irregularities were premeditated and introduced by the 1st Respondent, for the purpose of causing prejudice to any particular candidate.”

The court asked itself whether the petitioner had shown the conduct of the election to be so devoid of merits and so distorted as to not reflect the expression of the people’s electoral intent. The Court’s finding was that the evidence did not disclose any profound irregularity in the management of the electoral process. So, the Court disallowed the petition, and upheld the Presidential-election results declared by IEBC on 9th March, 2013.

Voter Register

The Court also made pronouncements on the voter register and its implications on the validity of the elections. The Court found that the register consisted of more than one document and that the process of compilation of the register was not in any way intended to favour one candidate over the others.

“In the light of the provisions of the Constitution [Articles 38(3) and 83] and of the Elections Act, 2011 [Sections 2, 3, 4], and of the evidence adduced in Court, we must conclude that such a register is not a single document, but is an amalgam of several parts prepared to cater for divers groups of electors. The number of parts of a register and the diversity of electors for whom it is prepared, is dictated by law, and the prevailing demographic circumstances of the country’s population. The register can also take several forms, as contemplated by Section 2 of the Elections Act, which stipulates that such a register - includes a register compiled electronically. The multiplicity of registers is a reality of Kenya’s voter registration system which is recognized in law and widely acknowledged in practice. The register once developed and finalized, is disaggregated and dispersed to various electoral units, to facilitate the process of voting... On the basis of the evidence on record, and of the merits of the submissions by counsel, we find no mystery about the “Special Register”, which was indeed used throughout the country, in diverse electoral areas. We also found no proof that the Special Register served any improper cause, in favour of any of the
Use of Information Technology

Failure of technology had been relied upon by the petitioners to challenge the validity of the election result. It was their assertion that it disrupted the transmission of election results and that the IEBC failed to fulfil its mandatory obligation to electronically transmit the results. The Court found that there was no mandatory requirement for the use of technology to replace the manual system and:

"An objective reading of the Regulations cited does not reveal a contemplation of elections conducted solely by electronic means. The elections of 4th March 2013 were not envisaged to be conducted on a purely electronic basis…. Can there, therefore, be an invalidation of final results, because of the non-transmission of provisional results…? As regards the integrity of the election itself, what lawful course could IEBC have taken after the transmission technology failed? There was no option, in our opinion, but to revert to the manual electoral system, as was done. We note from the evidence that the said manual system, though it did serve as a vital fall-back position, has itself a major weakness which IEBC has a public duty to set right. The ultimate safeguard for the voter registration process, namely “the Green Book”, has data that is not backed-up, just in case of a fire, or other like calamity. We signal this as an urgent item of the agenda of the IEBC, and recommend appropriate redressive action. From case law, and from Kenya’s electoral history, it is apparent that electronic technology has not provided perfect solutions. Such technology has been inherently undependable, and its adoption and application has been only incremental, over time. It is not surprising that the applicable law has entrusted a discretion to IEBC, on the application of such technology as may be found appropriate. Since such technology has not yet achieved a level of reliability, it cannot as yet be considered a permanent or irreversible foundation for the conduct of the electoral process. This negates the Petitioner’s contention that, in the instant case, injustice, or illegality in the conduct of election would result, if IEBC did not consistently employ electronic technology. It follows that the Petitioner’s case, insofar as it attributes nullity to the Presidential election on grounds of failed technological devices, is not sustainable.”

A Look into the Future

This being the first election petition to be heard by the Supreme Court, it sets the stage for the future development of election jurisprudence. The Supreme Court decision has been criticised and praised in equal measure. In the interest of spurring intellectual debate on the Supreme Court decision, the Chief Justice handed over the decision of the Court and other election material to deans of various law schools on the 6th of September 2013. This was a symbolic invitation to the academia to partner with the Judiciary to develop robust and patriotic electoral jurisprudence in Kenya.

It is noteworthy that the decision of the Supreme Court of Ghana delivered on the 29th of August 2013 on the presidential election petition filed by presidential candidate Nana Addo Dankwa Akufo-Addo in December 2012 cited the Supreme Court of Kenya’s pronouncements of important issues such as burden and standard of proof and the general principles for determining an election petition.
## ANNEX 3

### STATUS OF PETITIONS CONCLUDED AS AT 20TH OF SEPTEMBER 2013

<table>
<thead>
<tr>
<th>NO.</th>
<th>NUMBER</th>
<th>PETITIONS NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>SUCCESSFUL PETITIONS</td>
<td>12</td>
</tr>
<tr>
<td>4</td>
<td>PETITIONS STRUCK OUT FOR BEING FILED BY AN UNQUALIFIED PERSON</td>
<td>10</td>
</tr>
</tbody>
</table>
|   | PETITIONS STRUCK OUT FOR NON-PAYMENT OF SECURITY FOR COSTS | 7 | Kakamega HC EP 10
Kericho HC EP 2
Malindi HC EP 11
Mombasa HC EP 7
Nakuru HC EP 1
Garissa CMCC 4
Mombasa CMCC 1 |
|---|----------------------------------------------------------|---|---|
|   | PETITIONS STRUCK OUT FOR BEING FATALY DEFECTIVE/WANT OF FORM AND CONTENT | 3 | Garissa HC EP 4
Meru HC EP 3
Nairobi CMCC 1 |
|   | PETITIONS STRUCK OUT ON GROUNDS OF LACK OF JURISDICTION BY THE COURT | 1 | Kitale HC EP 3 |
|   | PETITIONS DISMISSED FOR WANT OF PROSECUTION | 1 | Kitale HC EP 8 |
|   | PETITIONS STRUCK OUT FOR NON JOINDER OF THE DULY ELECTED MP | 1 | Malindi HC EP 12 |
|   | PETITIONS STRUCK OUT FOR BEING OVERTAKEN BY EVENTS | 1 | Nyamira CMCC 2 |
|   | OTHER | 1 | Ogembo CMCC 2 |
|   | **TOTAL** | **47** | **47** |
## ANNEX 4

STATUS OF PETITIONS AS AT 20TH OF SEPTEMBER 2013

<table>
<thead>
<tr>
<th>NO.</th>
<th>POSITION</th>
<th>PETITIONS FILED</th>
<th>JUDGMENTS DELIVERED</th>
<th>PETITIONS WITHDRAWN</th>
<th>PETITIONS STRUCK OUT</th>
<th>PENDING JUDGMENT</th>
<th>PENDING HEARING</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Governor</td>
<td>24</td>
<td>15</td>
<td>0</td>
<td>2</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>Senator</td>
<td>13</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>3</td>
<td>Member of National Assembly</td>
<td>70</td>
<td>26</td>
<td>5</td>
<td>11</td>
<td>24</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>Women Representative</td>
<td>9</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>County Assembly representative</td>
<td>67</td>
<td>41</td>
<td>7</td>
<td>9</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>Speaker of County Assembly</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>188</td>
<td>86</td>
<td>17</td>
<td>32</td>
<td>46</td>
<td>7</td>
</tr>
</tbody>
</table>

### NOTES:

i. ‘Judgments delivered’ refers to judgments delivered on merits.

ii. ‘Petitions struck out’ refers to petitions struck out on technical grounds.

iii. Petition pending judgment means that the hearing has been completed and delivery of judgment is awaited.
# ANNEX 5

## ELECTION PETITION APPEALS IN THE COURT OF APPEAL, AS AT 26TH OF SEPTEMBER 2013

<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>ELECTION COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kisumu Civil Appeal No 16 of 2013</td>
<td>Judgment of Muchelule J. on delivered on the 14th of June in Kisumu EP 1 of 2013</td>
<td>Jared Odoyo</td>
<td>IEBC, R.O Nyando Constituency, ODM Party, Fredrick Otieno Outa</td>
<td>Member of the National Assembly, Nyando Constituency, Kisumu County</td>
<td>Nambuye, G.B.M. Kariuki, Gatembu, M’inoti &amp; Murgor JJA</td>
<td>Decision of the 5-judge bench to be delivered on the 27th of September 2013.</td>
</tr>
<tr>
<td>3</td>
<td>Kisumu Appeal No. 20 of 2013</td>
<td>Rulings and Orders of Dulu J. dated 19th June, 2013 striking out the supplementary petition, 20th June 2013 rejecting application to issue witness summonses and 02 July, 2013 rejecting an application for scrutiny and recount of votes.</td>
<td>Benjamin Andama</td>
<td>Benjamin Andola Sally Chesang (Returning Officer) IEBC</td>
<td>Member of the National Assembly, Khwisero Constituency, Kakamega County</td>
<td>Onyan-go-Otieno, Azangalala and Kantai JJA</td>
<td>Hearing of the appeal on the 31st of October 2013.</td>
</tr>
<tr>
<td>NO.</td>
<td>ELECTION PET. NO.</td>
<td>APPEAL FROM</td>
<td>APPELLANT(S)</td>
<td>RESPONDENT(S)</td>
<td>ELECTORAL AREA</td>
<td>ELECTION COURT</td>
<td>COURT PROCEEDINGS</td>
</tr>
<tr>
<td>-----</td>
<td>------------------</td>
<td>-------------</td>
<td>--------------</td>
<td>---------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>4</td>
<td>Kisumu appeal No. 24 of 2013</td>
<td>Rulings and Orders of Dulu, J. delivered on 19th June, 2013 striking out the supplementary petition, 20th June 2013 rejecting application to issue witness summonses and 02 July, 2013 rejecting an application for scrutiny and recount of votes.</td>
<td>Benjamin Ogunyo Andama Benjamin Andola Andayi Sally Chesang (Returning Officer) IEBC</td>
<td>Benjamin Andola Andayi Sally Chesang (Returning Officer) IEBC</td>
<td>MP, Khwisero Constituency, Kakamega County</td>
<td>Onyan-go-Otieno, Azangalala and Kantai JJA</td>
<td>• Ruling delivered dismissing the application on the grounds that the court has no jurisdiction to entertain interlocutory appeals on the 7th of August 2013.</td>
</tr>
<tr>
<td>5</td>
<td>Kisu Civil Application 25 of 2013</td>
<td>Judgment in Kisumu High Court Election Petition 2 of 2013 delivered on the 23rd of August 2013.</td>
<td>Cornel Rasanga</td>
<td>William Oduol IEBC</td>
<td>Governor, Kisumu County</td>
<td>Onyango-Otieno, Azangalala and Kantai JJA</td>
<td>• Application to strike out the appeal to be heard on the 1st of October 2013</td>
</tr>
<tr>
<td>6</td>
<td>Nairobi Civil Application No. 137 of 2013</td>
<td>Ruling &amp; Order of Mwongo, J. refusing the appellant the use of Forms 35 and 36 in Election Petition 1 of 2013.</td>
<td>Ferdinand Waititu</td>
<td>IEBC</td>
<td>Governor, Nairobi</td>
<td>Mweru Musenga and Kiage JJA</td>
<td>• Application dismissed on the ground that the court has no jurisdiction to entertain interlocutory appeals on the 24th of July 2013.</td>
</tr>
<tr>
<td>NO.</td>
<td>ELECTION PET. NO.</td>
<td>APPEAL FROM</td>
<td>APPELLANT(S)</td>
<td>RESPONDENT(S)</td>
<td>ELECTORAL AREA</td>
<td>ELECTION COURT</td>
<td>COURT PROCEEDINGS</td>
</tr>
<tr>
<td>-----</td>
<td>------------------</td>
<td>-------------</td>
<td>--------------</td>
<td>---------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>7</td>
<td>Nairobi Civil Appeal 154 of 2013</td>
<td>Appeal from ruling of Kimondo J. on scrutiny delivered on the 25th of June 2013</td>
<td>Kakuta Maimai</td>
<td>Peris Pesi Tobiko, IEBC, Returning Officer, Kajiado East Constituency.</td>
<td>Member of the National Assembly Kajiado East Constituency, Kajiado County</td>
<td>Karanja, Ouko and Kiage JJA</td>
<td>• Appeal dismissed on the ground that the Court of Appeal has no jurisdiction to entertain, hear or determine appeals from interlocutory rulings and orders of the High Court as an election court. Judgment delivered on 8th August 2013.</td>
</tr>
<tr>
<td>10</td>
<td>Nairobi Civil Application 231 of 2013</td>
<td>Judgment of Majanja J. delivered on the 15th of August in Machakos Election Petition 1 &amp; 7 of 2013. (Application for stay.)</td>
<td>Dr. Patrick Musimba</td>
<td>Kalembe Ndile</td>
<td>Member of the National Assembly, Kibwezi West Constituency, Machakos County</td>
<td>G.B.M. Kariuki, Kiage &amp; M’inoti</td>
<td>• Hearing on the 3rd of October 2013.</td>
</tr>
<tr>
<td>NO.</td>
<td>ELECTION PET. NO.</td>
<td>APPEAL FROM</td>
<td>APPELLANT(S)</td>
<td>RESPONDENT(S)</td>
<td>ELECTORAL AREA</td>
<td>ELECTION COURT</td>
<td>COURT PROCEEDINGS</td>
</tr>
<tr>
<td>-----</td>
<td>------------------</td>
<td>-------------</td>
<td>--------------</td>
<td>---------------</td>
<td>----------------</td>
<td>----------------</td>
<td>------------------</td>
</tr>
<tr>
<td>MALINDI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Malindi Civil Appeal No. 19 of 2013</td>
<td>Ruling of Odunga J. delivered on the 23rd of May 2013 declining to strike out the petition in Mombasa EP 4 of 2013.</td>
<td>Khatib Mwashetani</td>
<td></td>
<td>Member of the National Assembly, Lunga Lunga Constituency, Kwale County</td>
<td>Ouko, M’Inoti &amp; Murgor JJA.</td>
<td>Mention on the 2nd of September 2013. The matter directed to be allocated a date in October as it raises similar issues to those in Supreme Court Petition 10 of 2013. In addition, a 5-judge bench has been constituted to determine whether the Court of Appeal has jurisdiction to hear interlocutory appeals. Hearing on the 4th of October 2013.</td>
</tr>
<tr>
<td>13</td>
<td>Malindi Civil Appeal No. 22 of 2013</td>
<td>Ruling of Ochieng J. delivered on the 23rd May 2013 declining to strike out the petition in Mombasa EP 3 of 2013.</td>
<td>Naomi Namsi Shaban</td>
<td>Basil Criticos, IEBC, Isaiah Saha Madzungu &amp;</td>
<td>Member of the National Assembly, Taveta Constituency, Taveta County</td>
<td>Githinji, Makhandia and Sichale JJA.</td>
<td>Mention on 25th of October 2013.</td>
</tr>
<tr>
<td>NO.</td>
<td>ELECTION PET. NO.</td>
<td>APPEAL FROM</td>
<td>APPELLANT(S)</td>
<td>RESPONDENT(S)</td>
<td>ELECTORAL AREA</td>
<td>ELECTION COURT</td>
<td>COURT PROCEEDINGS</td>
</tr>
<tr>
<td>-----</td>
<td>------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>--------------</td>
<td>----------------</td>
<td>----------------</td>
<td>------------------</td>
</tr>
</tbody>
</table>
| 14  | Malindi Civil Appeal No. 23 of 2013 | Ruling of Kimaru J. striking out the petition for non-joinder of the duly elected Member of Parliament delivered on the 29th of May 2013 in Malindi EP 12 of 2013. | Aboub Ali | IEBC & Adhan Nuri Berhe | Member of the National Assembly, Lamu East Constituency, Lamu County. | Githinji, Makhandia and Sichale JJA. | • Appeal heard on the 16th of July 2013.  
• Submissions highlighted on the 25th of July 2013.  
• Judgment on 17th of October 2013. |
| 15  | Malindi Civil Appeal No. 25 of 2013 | Ruling of Odunga J. delivered on the 30th of May 2013 declining to order discovery in Mombasa EP 4 of 2013 | Gideon Mwangangi & Others | Khatib Mwashetani, IEBC, Mr Juma Musa (Returning Officer Lunga Lunga) | Member of the National Assembly, Lunga Lunga Constituency, Kwale County | Ouko, M’Inoti & Murgor JJA. | Mention on the 2nd of September 2013.  
Hearing on the 1st October 2013. |
Hearing on the 10th October 2013. |
<p>| 17  | Malindi Civil Appeal No. 14 of 2013 | Judgment of Kimaru J. delivered on the 22nd of August dismissing the petition in Malindi EP 14 of 2013 | Benson Karisa Ngirani Maneno | Jacob Machekele Peter Safari Shehe IEBC | Member of the National Assembly, Ganze Constituency, Kilifi County. | Githinji, Makhandia and Sichale JJA. | Matter yet to be allocated a court date. |</p>
<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>ELECTION COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>NYERI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Nyeri Civil Appeal No. 14 of 2013</td>
<td>Ruling of Wakiaga J. dated 10th of June 2013 dismissing the respondent's application to strike out the petition in Nyeri EP 1 of 2013</td>
<td>Dr. Thuo Mathenge</td>
<td>Nderitu Gachagua &amp; I.E.B.C</td>
<td>Governor, Nyeri County</td>
<td>Visram, Koome and Odek JJA.</td>
<td>Appeal heard on the 25th July 2013. Judgment delivered on 20th August 2013. Court held that trial Court had jurisdiction to hear the Petition despite it being filed before results of the election being published in the Kenya Gazette.</td>
</tr>
<tr>
<td>19</td>
<td>Nyeri Civil Appeal No. 18 of 2013</td>
<td>Ruling of Wakiaga J. delivered on 8th July 2013 dismissing the petitioner's application for reinstatement of the petition which had been struck out for non-attendance in Nyeri EP 4 of 2013</td>
<td>Richard Nchapi Leiyagu</td>
<td>Matthew Lekidime Lempurkel, IEBC, Returning Officer Laikipia North</td>
<td>Member of the National Assembly, Laikipia North Constituency, Laikipia County</td>
<td>Visram, Koome and Odek JJA.</td>
<td>Appeal heard on the 5th August 2013. Judgment delivered on 20th August 2013. Appeal allowed. Petition reinstated to be heard before a different Judge.</td>
</tr>
<tr>
<td>20</td>
<td>Nyeri Civil Appeal No. 23 of 2013</td>
<td>Ruling of Ngaah, J. on scrutiny and recount delivered on 6th August, 2013 in Nyeri EP 3 of 2013</td>
<td>Peter Gichuki Kinga’ra</td>
<td>IEBC, James Mbai, Mary Wambui Munene</td>
<td>Member of the National Assembly, Othaya Constituency, Nyeri County</td>
<td>Visram, Koome and Odek JJA.</td>
<td>Appeal dismissed on the 10th of September 2013. The court held that it had no original jurisdiction to make a determination on a factual and core matter in an Election Petition.</td>
</tr>
<tr>
<td>21</td>
<td>Nyeri Civil Appeal No. 29 of 2013</td>
<td>Judgment of Wakiaga J. delivered on the 9th of September 2013 in Nyeri EP 1 of 2013</td>
<td>Dr. Thuo Mathenge</td>
<td>Nderitu Gachagua, IEBC</td>
<td>Governor, Nyeri County</td>
<td>Visram, Koome and Odek JJA.</td>
<td>Matter yet to be allocated a court date.</td>
</tr>
</tbody>
</table>
## ANNEX 6

### HIGH COURT ELECTION PETITION APPEALS AS AT 26TH OF SEPTEMBER 2013

<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>APPELLATE COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>NAIROBI</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
• -Appeal withdrawn on the 19th of July 2013 |
• -Highlighting of submissions on the 4th of September 2013.  
• -Judgment on the 27th of September 2013. |
• Hearing of appeal on 8th of August 2013.  
• -Judgment delivered on 13th August 2013. Appeal dismissed. |
<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>APPELLATE COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
</table>
• Mention on the 9th of September 2013.  
• Mention on the 16th of September 2013.  
• Hearing on 24th of October 2013 |
| 6   | Meru High Court Election Appeal No. 2 of 2013 | Ruling on scrutiny and recount delivered by Hon. Odhiambo on the 4th of June 2013 in Meru CMCC 1 of 2013. | John Mbaabu Murithi | Jacob Mwinigi Muthuri IEBC Lucy Mbothi & The Returning Officer | | Lesiit J. | Meru High Court EP Appeal No. 2 of 2013  
• Ruling on 23rd of July 2013. Ruling postponed to the 8th August 2013.  
• Appeal allowed on the 8th of August 2013. Appellate court found that order for recount and scrutiny was premature. |
<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>APPELLATE COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
</table>
• Hearing of application held on 18th September 2013.  
• By consent, the application was withdrawn and the appeal will wait for the days scheduled in appeal rules. |
| 9   | Eldoret Civil Appeal No. 1 of 2013 | Ruling on scrutiny delivered by Hon. Mosiria on 8th July 2013 in Kapsabet Election Petition 1 of 2013 | Charles Kimeli Korir | Ezekiel Juma IEBC Baruch Kichirchir Suge | County Assembly Ward Representative Kabisaga Ward, Mosop Constituency, Nandi County | Achode J. | • Appeal filed on the 2nd of July 2013  
• Mention on the 2nd of August 2013.  
• Appeal withdrawn on the 2nd of August 2013 |
| 10  | Busia High Court Appeal No. 37 of 2013 | Judgment of Hon. Cherere dismissing the petition delivered on 1st August 2013 in Busia CMEP 1 of 2013. | Tadeyi Mukudi Muliro | • IEBC,  
• Paul Cheruiyot Kones & Fred Musirima | County Assembly Ward Representative Bunyala North Ward, Budalangi Constituency, Busia County | Tukeyott J. | • Appeal filed on the 14th of August 2013 at Busia High Court  
• Appeal to be heard in Kisumu. |
| 11  | Busia High Court Appeal No. 36 of 2013 | Judgment of Hon. Cherere dismissing the petition delivered on 1st August 2013 in Busia CM EP 2 of 2013. | Emmanuel Okore Sango, Joseph Makokha Ouma | Paul Cheruiyot Kones, IEBC & Stephen Omenda Mukanga | County Assembly Ward Representative Bunyala South Ward, Budalangi Constituency, Busia County | Tukeyott J. | • Appeal filed on the 14th of August 2013 at Busia High Court.  
• Appeal to be heard in Kisumu. |
<table>
<thead>
<tr>
<th>NO.</th>
<th>COURT PROCEEDINGS</th>
<th>APPELLATE COURT</th>
<th>RESPONDENT(S)</th>
<th>APPELLANT(S)</th>
<th>ELECTORAL AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Kericho Civil Appeal No. 21 of 2013</td>
<td>Machaelle J.</td>
<td>John Langat, Richard Ondieki</td>
<td>IEBC</td>
<td>Bomet County</td>
</tr>
<tr>
<td>13</td>
<td>Malindi High Court Appeal No. 1 of 2013</td>
<td>Meoli J.</td>
<td>Twahir Abdullahi Mohamed</td>
<td>Mwathethe Adamson Kadenge</td>
<td>Malindi</td>
</tr>
<tr>
<td>14</td>
<td>Malindi High Court Appeal No. 2 of 2013</td>
<td>Meoli J.</td>
<td>Bakari Hassan Juma</td>
<td>Mwathethe Adamson Kadenge</td>
<td>Malindi</td>
</tr>
<tr>
<td>15</td>
<td>Malindi High Court Appeal 3 of 2013</td>
<td>Meoli J.</td>
<td>Sarif Abdulkarid Abdurhaman</td>
<td>Manase Samuel Guyo</td>
<td>Malindi</td>
</tr>
</tbody>
</table>

- Appeal filed on 22nd August 2013.
- Appeal was dismissed on 2nd August 2013.
- Matter to be placed before the judge for directions.
- Matter to be placed before the judge for directions.
- Matter to be placed before the judge for directions.
- Matter to be placed before the judge for directions.

<table>
<thead>
<tr>
<th>NO.</th>
<th>ELECTION PET. NO.</th>
<th>APPEAL FROM</th>
<th>APPELLANT(S)</th>
<th>RESPONDENT(S)</th>
<th>ELECTORAL AREA</th>
<th>APPELLATE COURT</th>
<th>COURT PROCEEDINGS</th>
</tr>
</thead>
</table>
| 16  | Garissa Civil Appeal No. 10 of 2013 | Judgment of Hon. Kassan delivered on the 17th of July 2013 in Garissa CMCC 3 of 2013 of 2013. | Abdinoor Adan Abdikarim | • IEBC  
• Mohamed Muhamud Osman | County Assembly Ward Representative, Adamasajide ward, Wajir West Constituency, Wajir County | | • Mention on the 23rd of September. |