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KENYA ELECTIONS:
WHAT VOIDED RESULTS MEANS AND
NEXT STEPS FOR THE COUNTRY

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P R O C E E D I N G S

MR. O'HANLON: Good morning, everyone. And welcome to Brookings. I'm Mike O'Hanlon. The first thing I want to say is, I'm sure everybody feels this way, I know all of our thoughts and prayers and sympathies are with those in Las Vegas. I'm sure this is something that's on every American's mind this morning. And I just wanted to say that. I know everybody here is going to join me in that sentiment.

Secondly, I wanted to welcome you back to our second discussion in just a few months, on the Kenyan Election process which, as you know well, continues longer and with more complexity than we had originally anticipated when we sat down here, the same group, to talk about the issue in late July.

By the way, our friend, Keith Ellison, unfortunately, had a death in the family, so he won't be here. We were originally expecting him, which is why we have had another chair. He's an Africa specialist at the National Democratic Institute. But fortunately we still do have an excellent panel.

And just to my left is Matt Carotenuto, who is a professor specializing in African issues, and who has written an outstanding book about President Obama and his origins in Kenya, and his relationship to Kenya. He's a professor at St. Lawrence University, with which we often collaborate on our Africa Security Initiative here.

To his left is Lauren Blanchard, who is an Africa specialist at the Congressional Research Service, and one of the most prolific and well-known, and eloquent speakers on this topic, also with considerable experience in election observation missions. And I should have said Matt also has considerable experience with St. Lawrence's campus in Nairobi.

And then finally, to our all of our left, is John Tomaszewski, JT as he's often known, African specialist at the International Republican Institute, also extremely eloquent on these issues, also with a lot of in-country experience in Kenya, but also now broader responsibilities at IRI.

So, we wanted to welcome you all, we are going to, this morning, have a bit of discussion up here amongst ourselves, and then invite some of you. And if there's someone here from the Kenyan Embassy, which I think may be the case, I'll make sure that we give them a chance to speak after we've initiated the conversation up here.

Just a very, very quick review, and then I'll work down the panel, and I think Matt will give

you a little more of a review for those of you who may not be complete specialists in this topic. And by the way, I will confess up front, I am not a complete specialist on this topic, so I'm here as much to learn as to moderate.

But as you know, the main elections, what were intended to be the elections for presidency in Kenya, were held on August 8th, and the main candidates were, the incumbent President Kenyatta, of the Jubilee Party, facing Mr. Odinga of the National Super Alliance, or NASA as it's sometimes known, and that's evolved in composition and name over the years a bit, but that was the basic faceoff.

And Mr. Kenyatta, again the incumbent, was declared the winner of that election in a vote that widely seen as relatively well done by most observers, I think it's fair to say, but there were some problems that ensued, because even though Mr. Kenyatta was declared the winner, and therefore considered to have been reelected, on September 1, the Kenyan Supreme Court annulled the election, as you know, and in the course of the next three weeks, explained more fully what its reasoning was.

But basically, they were unhappy about the transparency and about the way in which proper forensics, vote counting could be checked, and had been carried out by the Independent Election Board of Kenya. And so in the end they demanded that there be a complete revote. And that process, again, began at the beginning of September but played out, essentially, throughout the month.

The original date for the new vote was given as October 17, but it's now October 26, but we don't really know if even that will happen. Because, again -- and I'll finish up here in just a second -- and then Matt can correct me, and also give more texture on anything I've not quite explained adequately. But, as you know, there are objections at the moment by both candidates of one type or another, and there are also demonstrations that are ongoing. And there's been some concern and some violence even today around these demonstrations, nothing like what happened 10 years ago, when more 1,000 people died after a disputed presidential elections.

And as we all know there's also a complex ethnic dimension to these electoral disagreements. I don't want to suggest that ethnicity drives the politics, but there are five major ethnic groups in Kenya, and the Luhya group is largely seen as part of the Odinga coalition, and the Kikuyu group; part of the Kenyatta coalition, and it's much more complicated than that. So, I'll stop before I get

myself in trouble.

But this is an additional overlay that we have to consider as well. In any event, the incumbent is saying that there are laws that his party would like to pass, that would change the way in which the Independent Election Board, is overseen and maybe even reduce its independence, even though that's the first initial in its name.

But the defeated, Mr. Odinga, has his own demands about how that IEBC, which he thinks didn't do a very good job, in August, and apparently the Supreme Court agrees with him on that, that they should be, at a minimum, shaken up a bit, and reformed, even if it's not necessarily under the oversight of the president, that that process would happen.

So I think that is very basic lay of the land. Fundamentally we have a lot of uncertainty about where this goes next, and therefore without further ado, I will ask Matt to begin the explanation, and also take us back a little bit further in time, to understand a little bit about the texture of Kenya's basic political scene. Over to you.

MR. CAROTENUTO: Thanks, Mike. And it's a pleasure to be here, and talking about a very important issue that Kenyans are facing. As a historian, I think it is important to kind of think about this in historical context, mostly because the election itself on August 8 was often framed that way, it was an election about continuity, or was it an election about change, or was it an election about addressing historical injustices. It's usually on the issues that Kenyans were trying address, even now that the Supreme Court ruling has really dominated the political discussion of the reelection, of the redo.

So, just as a reminder, you know, 2017, is the 60th anniversary of Kenya's electoral history, in that sense. It's important to note that since independence in 1963, until 2002 Kenya was ruled by one political party, and from 1969 to 1991, it was, in fact, a one-party state.

So, multi-party elections are kind of a second wave of democratic reforms is a relatively new and ongoing process in Kenya, this is the sixth election since the international pressure and domestic activists forced the government to retract the one-party state.

Several of those elections, 1992, 1997, as Mike mentioned, 2007, were marred by electoral-related violence; 2002, 2013, and for the most part 2017, has not had that same violent pattern, although this election violence that we see in 1992, 1997; and particularly 2007, definitely frames Kenyan

voters' memories, concerns, as well as the rhetoric, and sometimes divisive campaign process that we see in the country.

Just as a sense, right, this is also the second election since the adoption of a new constitution in 2010, and I'm sure maybe, we'll talk a little bit more about the role of devolution of power. This election that we see right now, scheduled for October 26th, is just a presidential election, it is not a redo of the entire electoral process that Kenyans voted for six different seats. And that's an important difference I think in understanding how Kenyans are vested in local politics, and regional politics, as well the national politics at the presidential stage.

Just to give you a sense, you know, Uhuru Kenyatta, and Raila Odinga are the sons of the first vice president of the country, they are well-known political figures. These aren't people that were new to the political scene in 2017, this will actually be the fourth time that they've squared off in a presidential vote, if you count the reelection.

So, this is very sort of normal ground for folks, they know these figures, they represent, you know, political parties that have coalitions across the country, although there's regional dimensions for that, which we can talk about. And I think Odinga had tried to position himself, albeit an older candidate, and a more sort of seasoned politician as the candidate for change, trying to address the historical injustices.

Kenyatta, very much was campaigning on prospects of economic development, grand development projects sponsored by his Jubilee coalition government, regional security issues. His concerns were kind of framing the issues that we talk about in 2017.

Now, when the August 8 vote happens, and there concerns leading up it, and it's important to know that one of the senior officials in the IEBC, Chris Msando was murdered shortly before the election, that case is ongoing. That's very much a concern. We don't know who is responsible for that, but the fact that he was in charge, or at least in part in charge of some of the ITC network for the IEBC is an important one to keep in note.

The vote was peaceful, and as is usual in Kenya, the concerns are around pre- and post-election issues, but then the real concern began with the tallying of the vote. The electronic tallying of the vote, and reporting from the constituency level, versus the manual forms. And I'm sure we'll talk about

Forms 34-A and B a lot; at least 40,000 34As that were at the polling station level, the 290 from 34-Bs, at the constituency level.

This is where the dispute happens. So, it was a lot of pressure in the IEBC to announce the vote -- announce the election results shortly after the August 8 poll. They were announced the evening of August 11, late in the evening. There was immediate reactions and protests that happened, and it was widely reported that many of those protests met with violence. We don't know 100 percent who caused that violence, we do know that the police have been implicated, there have been some claims that protesters were implicated.

Then there was very limited reporting on that, in and of itself, so that's another there I think we have to consider. At least 24 people were killed, and the rhetoric after was very much by the opposition trying to push for this election being annulled, changed, a fraud, and there were claims early on that they were not going to go to the Supreme Court, and it's important to note that the opposition went to the Supreme Court in 2013, and their petition was denied. So they had relative little faith in that process moving forward.

But eventually they did file, right at the deadline, a petition against the Supreme Court. And then on September 1 the Supreme Court had 42 votes, annulled the presidential election. We then, several weeks later, found -- what was it -- 600-some-odd pages of the election ruling, and rebuttal from the judges that was read on national television for, like, 12 hours; so it was quite an important day in thinking about this, and quite a lot of details to cover.

But I think, you know, coming to the Supreme Court decision itself, the summary of that is really about process over votes, and who actually won. The Supreme Court was really holding the IEBC accountable to not upholding the correct process, and not being transparent in how they released data to the public, release data, the constituency forms. Did they declare the election before all the forms and data from the constituency and polling stations were actually there.

And that is really the process that the Supreme Court ruled upon. They did not say that the Kenyatta regime was responsible for that, that's left to other people to decide. And that's this issue moving forward I think is important for us. So, I'll stop there and let my colleagues up here continue.

MR. O'HANLON: Thank you, Matt. And JT, over to you to take up there, and also get

into some of the specifics of what's been going on these last few weeks. Thank you.

MR. TOMASZEWSKI: Sure. So, thank you for having me, and this of course, this panel is very timely as we head into what will be a really important week for Kenya with protests ongoing, with consideration of electoral reform, with threats of boycotting the election, and of course now we have the heads of the Western sort of embassies coming out and saying that the two sides need to talk. So, a lot of pieces are starting to come to a head in Kenya, and I think we'll see more of that as the week progresses.

It's important to note that the electoral result did have the incumbent President Kenyatta winning, with 54 percent of the vote, to Odinga's 47; ELOG, a domestic observer group, conducted a parallel vote tabulation that pretty much matched that. And it's important to keep those numbers in mind, as we talk about anything related to what the government is saying regarding the Supreme Court ruling, and the overturning of the election, because it's in their view that, in fact, this election should have stood, that the court acted inappropriately, and well beyond its mandate, and outside of the constitution even, by overturning the election.

While there were process issues, I encourage you to read the dissenting opinion of the two dissenting judges, where they basically came out and said, listen, while there may have been process problems with the results transmission, overall if you look at the forms, the president won the vote, and that should stand, and the votes 8-plus million people should overall what four justices said. And of course that rhetoric has continued to mount as we get closer to Election Day.

Election Day was initially supposed to be October 17, now it's October 26. The question is, will it change? I think a lot of us saw the initial election day as sort of a marker that was put down, and that there was a lot of likelihood, that the Election Day would change, largely because even the technology itself, the IT firm, MoFo, basically said that it would take them a considerable amount of time to recharge 45,000 biometric kits that would be needed for voters to come into the election station, put their thumb print in, and go through the voting process.

NASA has basically said that they won't be going to the polls unless the current leadership of the IEBC stands down. There's been everything from just talking about the removal of Ezra Chiloba, the CEO of the Electoral Commission to Wafula Chebukati who is the chairman of the Electoral

Commission, all the way down to even the IT director and other figures. We've seen a list of 10, 11 names.

Of course, Jubilee comes back and says, you can't have it, you can't have it all your way, you can't just go to the street and ask for changes, you need to go through a process, there's a process to remove IEBC officials. If you want to say that we are enforcing the constitution, let's go through that constitutional process.

So, you see the sort of volley back and forth, and I think that rhetoric will continue to build over the next couple of weeks. We are seeing mass protests occurring. There was a call for mass action, because neither side was really making much headway, and NASA, the opposition felt like talking wasn't getting anything done, so they've gone to the streets. And today we see protests on the streets in certain parts of Kenya.

Teargas, police, one reported death in Siaya county, and probably others that we haven't heard about yet, certainly some injuries. We also saw recently, last week, a prominent -- a well-known NASA official, who was an MP, his name is Babu Owino, he's a guy who basically has been the student body president of the University Nairobi for like 10 years, he's been there forever. He's just a forever student there, and he was arrested, he was arrested.

He was arrested on his speech, he called President Kenyatta a son-of-a-something, in a rally, and made a number of other statements and was arrested for hate speech. As he was released, he was rearrested again. And that has set off a number of protests in universities, namely Nairobi University, and we have seen footage of GSU soldiers units going in and actually frog-marching young girls who are students, out of the university, we and seen footage of students being beaten, the oversight body of the police has been -- has launched the inquiry, the cabinet secretary of the interior has also said that he wants to look into this, Matiangi.

So I think that, of course, now you see students really getting involved, and while Babu Owino now is free, it's a question of how does the security react to some of these protests moving forward and what if NASA doesn't go to the polls, and these protests continue, and they grow more violent, how will this balance between safety and certainly someone's right to protest is protected.

Jubilee has gone full steam ahead, it is matched. NASA, I think, with just about every

strategic move, Jubilee says, okay, well, the electronic systems were hacked, the electronic systems that you wanted, they were hacked, and the election was null and void, so now we are going to amend the election law. And now we are going to say, if there's a discrepancy between the electronic result and the manual result, we'll go with the manual result. And that is a debate that's currently ongoing, and that election law is being heard in public all this week.

Another key piece of this election law that you should be thinking about, NASA is asking for the removal of the IEBC chairman. So, what Jubilee has now done, is they've said, okay, we are going to have to have some questions about this. Well, we know constitutionally and according to the law, only the IEBC chairman can call the election result. So, no IEBC chairman, and for some reason he doesn't show up on election day, if for some reason he disappears, there's no real provision in the law as to what happens if he doesn't show up. Can someone else call the election?

So, what Jubilee has done is said, okay, do you want to try and get rid of this guy, we are going to come up with a constitutional provision, an electoral provision that basically says that the deputy chair can also act in place of the chair.

So, you see sort of this volley back and forth. It's happening in parliament, parliament where Jubilee has commanding majority, NASA has vowed that they are not sitting in parliament until this election is over, because they see the government as illegitimately elected, and illegitimately in place. That includes the president by the way, where they say that they need to have sort of a caretaker government till an actual election takes place.

The volley back then, is that, you know, Kenyatta's guys say, listen, even the attorney general has said, we don't need a caretaker government, we just had an election that was put up for rerun, the president shall stay in place until the new election is held. We are seeing a lot of back and forth.

The other key thing is the division in the court. Since the court case we initially saw President Kenyatta come out and say, literally, that day of the court ruling, on September 1, he said, "I accept the results. I disagree with them, but I accept them, and we'll have a new election." Then he goes to a rally somewhere in Nairobi at a market, and he stands in the top of his SUV, and he says -- the calls the justices "wakora" which is basically like crooks or robbers.

This sort of dual rhetoric of, you know, I'm going to go forward with this process, but then on the campaign trail, or with his people saying something differently, creates a sort of opportunities for them, the Opposition, to say, you see, they are trying to go after the judges just for carrying out constitutional mandate. Then of course he reaction is, well, Jubilee will say, well, he's just upset, but ultimately the election is going forward.

As a result, you've now seen a number of petitions launched to the Judicial Service Commission, which is the body that oversees sort of the mandate of the Court. In a sense that, if you have a problem with one the Supreme Court judges, you would file a petition with the Judicial Service Commission and basically say, this one, he can't do his job, or this one, he's not doing the right work, or she's not showing at the right place. This type of stuff.

These petitions are causing lots of political intrigue. One petition alleges that two of the justices and the majority who voted to overturn the election had met secretly with NASA, and then of course petition now has been filed against the dissenting judges, alleging other things as well. This is all politics, folks. And I think it's going to get nastier, and more intense as we go into Election Day.

Finally, I would just say that, you know, a key element here, moving forward, is looking at what will happen after Election Day, and Lauren will speak about that. I would just say, expect -- well, this electoral reform that's currently ongoing, I think it will get more intense, I think we'll be looking at some serious electoral changes to the law. I think they'll be looking at the courts.

So, we actually are going to see, moving ahead, some serious challenges to the democratic system in Kenya. Which way it goes? No one knows as of yet.

MR. O'HANLON: Fantastic, JT. Really good. And yes, we'll ask Lauren in a moment to comment on everything up until now, as well as what she sees coming next with the election itself, and then post-election reforms. But before that, just one point of clarification for either Matt or JT, I want to make sure I got straight her. So, this rerun is just for the presidency, not for all the other positions?

MR. TOMASZEWSKI: That is correct.

MR. O'HANLON: And yet the same balloting mechanisms were presumably used for the other seats, so why is there not a logical disconnect? If you are appealing the presidential vote, how could you accept the lower-level votes? Both of you actually.

MR. CAROTENUTO: Yes. I would say that if you look at the -- again, if you look at the 2013 election as a model, that the Supreme Court ruling against the petitioner, the opportunity candidate, to overturn that election was used as precedent in a lot of cases for local-level elections, parliament-level elections, et cetera, and I think that is going to have huge ramification on the legal framework moving forward, and there are over a hundred, I believe, right, in terms of petitions right now moving through the courts.

It takes a long time for those to happen. 2013 it took a couple of years I believe for all those things to play out, so I think that's going to heavily impact things moving forward.

MR. TOMASZEWSKI: Yes. The Supreme Court moved on much tighter timeline, of course due to the constitution, and the presidential provisions there. I think the petition dealt with one case, and now, you know, as we've heard, they are moving downward. I mean, we are seeing a number of governor challengers now coming back and going to the Court and saying, listen, we need to relook at this Jack Ranguma out in Kisumu.

We've seen a case now go up in Mombasa, Kirinyaga, some of these other counties. Litigation, litigation, litigation is the name of the game in Kenya. We are going to see more of it, and that will continue to knock downward. But I would say though that some of these reforms that are going to be put in place, we should watch and see how they maybe cancel each other out moving forward. And also, I mean, it's important to note that in 2007, 2008, there were a number of court cases that went on and on and on, even after parliament ended and the MPs went home. So, some of the stuff can drag on for quite some time.

MR. O'HANLON: Great. Thank you. And Lauren, now over to you for your assessment.

MS. BLANCHARD: All right. Let me start with the Election Commission. The Election Commission, the IEBC, is under an intense amount of pressure right now, as if they weren't before. There are a number of outstanding questions that they have not publicly addressed, some of them were raised in a late memo by the chairman to the CEO, some of them have been raised by election observers, the EU, in particular, has a large election observation mission that's been on the ground throughout, and has recently released sort of a series of questions, some of which repeat the some of the questions raised by the chairman. Some of the civil society groups, civil society -- coalition, they've also raised a

number of questions.

Among these questions are: what is the plan if the technology fails again? For about a quarter of the polling stations results did not come through in the way that they were supposed to. There's an outstanding question of why that didn't happen. Now, the quick answer that a lot of people point to is the notion that there wasn't 3G or 4G network in about a quarter of the areas. And that was an estimate that the Election Commission had put out right beforehand.

But there are a lot of people who challenge that assumption, people who have gone around and said, I'm standing in this place, and I have 3G status. There wasn't a test done before the election was held. There hasn't been a test done since. So, there are some outstanding questions about why you didn't have a quarter of the results coming in the way they were supposed to come in.

If that is going to be the case, the Election Commission has to figure out a way to deal with this question of manual technology now, in those cases where notionally there wasn't a cell network to transmit the results they were supposed to transmit both as sort of a digital, like a text message basically, of the results, and then also a scanned copy on these special gadgets.

And that was supposed to be uploaded and sent both to the constituency tally center, and then also to Nairobi. Again, it didn't happen in a quarter of the places. Why didn't that happen? There are a number of other questions, there are still some outstanding questions with the register, with the voter's register. The number of voters registered, announced I think in June, you know, or when the register was declared final, differed from the number of registered voters that was announced when the Election Commission announced the results on August 11. So there are some questions about that. There was about, I think, a 25,000-person variance.

A number of other questions again outstanding, so what is the Commission's plan for all of this? And how are they communicating it, because communication was a problem beforehand, and communication is critical for credibility. What are they going to do in terms of training for poll workers?

There were a lot of mistakes made in filling out the result forms, and that led to some problems and some questions. In a number of places you had the presiding officers at the polling stations filling in the results form wrong, and then when they took it to the constituency level, the constituency returning officer was having them change the forms.

Now, sometimes this was completely above board, and done in front of election observers, but the form was changed after the fact, and so that, again, that raises concerns going forward. So, training of poll workers before they send them back out here, and we've got -- I mean, we have less than 24 days now until the election.

The question about the budget implications for the polls, the Secretary of the Treasury, Administrator of the Treasury has just released a budget with implications that include cuts for the next year, to some important institutions, like the judiciary, and some of the independent commissions that do police oversight, human rights. So, this is going to be a costly exercise, and this is not just sort of the running of the polls, but also security for the polls.

Let's see, other questions that are coming up. Well, obviously, where the Opposition participates is a critical one, and again this goes to the credibility of the Election Commission. Are there changes that need to be made to the personnel on the Commission, either at the Commissioner level or at the staff level?

What's happening with investigations into potential -- a potential role by Commission staff in some of the illegalities that were mentioned in the Supreme Court ruling? Again, the clock is ticking. There are human issues at hand. We've got to do procurement for the ballots again, there were some controversy, and I'm not sure where, it's all ended up the UNDP offering to play a role in ballot procurement, and that being rejected I think, both by the ruling party and the opposition.

So, outstanding questions; I know that ambassadors from the donor community are trying to mediate between the parties, but they are not talking to each other at the moment, so you've got a lot of problems, and again, a short amount of time to fix these things. If you don't have some critical changes, what happens when the polls are run are run again, if the Opposition participates, and the Supreme Court finds similar problems?

The Chief Justice has said that the Court will not hesitate to nullify another election, if they see the same type of problems. What does that mean? So we could, potentially, and this is the concern that Jubilee and the government have been raising, we could be in a sort of cycle of this happening again, and again, and again.

The Governor of Nairobi, I think today, threw out the idea that the president could declare

a state of emergency. That has all sorts of implications. He can do it constitutionally, he can do it for about 14 days, and then he needs two-thirds parliamentary majority to maintain that for two months. He could probably get a two-thirds parliamentary majority, but for another two months he would need three-quarters parliamentary majority. That would be a much tougher ask.

And what does that do for economy in the meantime? You know, there are a lot of outstanding questions that the government needs to be able to address, and I think this uncertainty that it's struggling with right now is a major challenge. We are now into month five of a nurses' strike, that is crippling health care in the country. This four-month nurses' strike follows after a three-month doctor strike.

You have Kenyans who are able, leaving the country to go get health care. So, these are critical problems that the government needs to be able to deal with, and it's obviously, sort of, a bit distracted right now by the upcoming polls. I think JT raised this question about threats to the judiciary and the potential for changes to the election laws, and potentially, at some point in time, the constitution. I mean this is an outstanding question.

The donor ambassadors had a press conference today, the U.S. ambassador and others, suggesting that changes to the election laws before the next elections would not be appropriate. I don't know whether or not the government is going to try to go ahead with these, and whether or not they enough votes in parliament to push them through.

But these are outstanding questions. But what happens afterwards? What happens to the independence of the judiciary? What happens with a number of civil society organizations who have been facing threats recently? This isn't necessarily a legal issue, but you had two very prominent civil society organizations threatened with deregistration right after the election result was overturned. What happens with their cases? Do you sort of see a continued threat? There has been -- JT mentioned this -- mention by the president of wakora, crooks. There's been an effort on social media and in other public statements by some members of the ruling party to create this conspiracy between the judiciary, the justices --

SPEAKER: Capture.

MS. BLANCHARD: Yes, judicial capture. They call it the wakora network. And so this

is, we are seeing a bit of a reply of what happened around the ICC cases of President Kenyatta, and Deputy President Ruto, where there was an effort to paint civil society as sort of in cahoots with the court in trying to get the president and deputy president. And so some of those civil society organizations are involved, and there have been sort of efforts to suggest that they were influencing the four Justices who ruled to overturn the election.

So, these are questions, the role of the security forces in the elections. You know, I was an election observer with NDI for the August 8th Elections, and the police behaved very well for the most part on Election Day. A very impressive sort of keeping of order, and very polite, but you did have some serious concerns raised after the election results were announced on August 11.

You had some protests particularly in opposition areas, and I think at least 28 people, if not more, were killed, and people those areas and human rights groups suggest that they were killed by police. JT mentioned that these were teargas beatings last week at the University of the Nairobi. If the protests continue in advance of the elections we see more of that, more clashes with police, and if the Opposition doesn't like the outcome of the next election: how do they respond, or how do they respond to the results? How do the police respond to that?

If the results turnout significantly different how does the government respond? How do government supporters respond? I think there's a lot of interesting questions in terms of how voters are going to behave in the next election. You know, I think there's a lot of assumption that people will vote along to a large extent, ethnic lines, regional lines.

But how do you threats against the judiciary, threats against the Election Commission, threats to supposedly change -- potentially change the constitution? How do these things impact the way voters are thinking about how to go out? So I think we've got a lot of questions going forward.

MR. O'HANLON: Outstanding. So, I've really just got two questions, myself, to pose to the panelists. And I'm just going to put it together in one complex question, and I'll let them each react. and then we'll go to you. But I'm going to begin with our friend from the Embassy, as soon as we complete this part up here. So, my two questions are related to each other, so you can address which one you like better or, you know, combine them.

I guess the first one really is, listening to all of this as a non-specialist, and watching it

through the news. I'm both a little worried but also impressed by the fact that this hasn't been 2007, 2008. And, you know, the Supreme Court intervened in a way I hadn't seen before in a lot of countries, and there are demonstrations, we are all nervous about where this could go, but so far, more or less, so good. Given the stakes you would expect a certain amount of passion, and yet it hasn't led to a lot of bloodshed, even though there has been some, tragically.

So, I guess my question is, sort of, you know, what's your bottom line, just gut feeling for how Kenya is doing at the moment? And how this whole process has played out? You know, you can do it on a scale of 1 to 10, with 10 being more optimistic or more hopeful, or you can just use whatever framing you wish.

And then related to that, what's your expectation about October 26? Do you think it's likely to happen on or about that date? Do you think the voters are likely to go reasonably well from what you've seen? Again, I don't want to pin you down to predictions that you can't really, you know, take a crystal ball to make with any kind of rigor. But I would just be curious for what you are hoping and what you're expecting. And I'll just work down the panel, starting with Matt.

MR. CAROTENUTO: Yes. I think it's very interesting. I mean, when you look at the reaction that Kenyans had on the September 1 ruling, it was mixed. Obviously if you're a supporter of Kenyatta you were disappointed. Supporters of Raila Odinga, you know, put the Supreme Court Justice Maraga as a hero, I mean, they were posting his picture, you know, wig and all, as the sort of hero of democracy.

And it think Kenyans, you know, that I've talked to on both sides of the political divide, have been appreciative of the Supreme Court ruling to weigh in on electoral disputes, even if they didn't necessarily agree with that decision. But they are also taking their actions and their political kind of rhetoric from the top down.

So, we are seeing pretty intense political rhetoric as the "wakora" comment was mentioned, you know, also other comments by the ruling party, of claiming that this was a coup by four people. Using the language of coup is a little bit distressing, however, the rhetoric, as intense as it is, is really pointing to institutions. So, they are saying, hey, we have a problem with the judiciary, so we have to deal with the judiciary.

Or if Raila wins we are going to impeach him because we have the numbers in parliament. Now, those are distressing things but they're also pointing back to the institutions, constitutional institutions, and not the street, and so I think that is an interesting way for this to play out. The role of the security forces is really important in this, whether peaceful protests will be allowed because in the past that doesn't seem to necessarily be the case.

They get shut down really quickly, and sometimes that leads to violence. I think Kenya is, overall, also see this ruling not just in its global precedence for democratic change, and for the African Continent moving forward, but also that this is one of the first kind of rulings on historical injustices, right, that have been overturned.

Kenyans have long felt that any historical injustice that reaches at the highest level like this never seems to get worked out in the judiciary, no one seems to be brought to task on this, and that this is a positive step forward. So I'll let the others pick up on that.

MR. O'HANLON: Thank you. Lauren?

MS. BLANCHARD: I mean, I think that I would share the exact same sentiment. There were some very important changes put in place under the 2010 constitution that have brought us such a such a long way from where we were in 2007. The fact that you didn't have violence after this election it was to some extent and, you know, the ethnic alliances were different, but because the Opposition felt that it had the ability to go to the courts.

And I think what is very important, if nothing else, no matter what the what the outcome of it was, the ruling on September 1 told the Opposition and Opposition supporters, you have you have recourse, which they didn't feel that they had in 2007. So that's very important. You know, I think in looking at what's happening and playing out in Kenya, in spite of all of the threats, compare it to what's happening in places like Uganda.

There isn't independent police oversight mechanism, and when you have these cases of beatings, and inappropriate -- allegations of inappropriate behavior by the police, there's a mechanism to address that. You don't have that in Uganda. You know, they are in the process right now sort of in parallel of potentially changing the constitution with an overwhelming parliamentary majority to get rid of age limits so that presidents over 70 can run again.

You know, there is quite a bit of comparison, and it's interesting to watch people in East Africa sort of making these comparisons. So, you still do have these very strong independent civil society mechanisms, who are able to go through. You have this strong and independent judiciary. I think these are very, very important. You know, in looking ahead though I think right now the parties in Kenya, and people are thinking about sort of the immediate.

And it's also important to think about what's coming down the pike, 2022 will be the next elections, Raila Odinga will likely not be running again, he said he won't. He will be a bit older, if (inaudible) 70 is any indication, he can keep running for a while.

Uhuru Kenyatta will be term-limited, and his deputy president, Ruto, has declared that he is very interested in the slot. How do the current ruling party communities feel about that? Well, they may not be sort of all on the same page in five years as they are right now, so changes to the constitution that diminished the ability to challenge election results in court, may not be such a good idea by 2022.

So, I think this is -- it's hopefully something that can be thought about if we get a bit of a cooling-down period. In terms of whether or not the elections will take place again, you know, there are a lot of concerns raised, that quite frankly, you know, even with the best of goodwill, and if the parties started talking tomorrow, that the changes that need to be made may take more than 24 days.

If that is the case, I think that there are various international actors that are, I think, ready and willing to step in. I know that the various governments have been thinking about sort of mediators. But then how long do you push this down the pike? Again this is -- you know, this is a costly and, sort of, you run into a constitutional crisis the further you push it down the road, and it would require, I think, a parliamentary change. So, I don't know.

MR. O'HANLON: JT?

MR. TOMASZEWSKI: I would first start by saying we have to always keep in mind that Kenya is a young democracy, and this is a sausage-making process. This is all about the push back and forth, and I think the Kenyans really achieved an amazing victory when they voted in that constitution in 2010, the most progressive on the continent. Strong Bill of Rights, a number of areas that brought largely marginalized populations back to the table in terms of equity.

And I think what we've seen, through this court ruling, good or bad of what you make of

the court ruling, is the fact that the court ruling occurred, that the ruling in and of itself and the courage of the judiciary has changed, even from the last election. It was very clear from the court ruling also where Odinga took on Kenyatta in 2013, that there were still some questions left on the table in the way in which the Court made the ruling.

But at least the Court was very clear this time, and I think the fact that you see this happening, Kenya's judiciary has definitely shown its teeth, it's shown that it can bite, it's shown that it can do things, and that's not something we see in a lot of countries in Sub-Saharan Africa. Frankly in many parts of the world.

So it's something we should be thinking about, and be happy about, because it has definitely showing its value. This has been a release valve, and this ruling has certainly allowed opposition to feel like they have a voice, like they can do something. I still, and I've said this before, and I'll say it again, I still think Kenyatta won, and I think it's a very, very tall bar for Odinga to win this election and getting enough votes.

Kenyatta made inroads into a number of areas where Odinga should have been stronger. Places like Bungoma, places like the coast, parts of Northeast Kenya, he just didn't pull in the votes. So, if Odinga is going to be successful in this part, he's got to turn that around. Devolution is really important, and I think what's different and the reason why we should be very optimistic about Kenya, is that devolution has diluted political power at the top and moved it down to the ground.

I mean while we continue to talk about the presidency there are 47 county governments active right now doing work, some of them court cases but they're working, and they're spending money, and they're doing development projects, and they're out there moving the economy along. And you know, that can't be discounted, and I think that has a role to play in keeping the country moving, and not waiting for the presidency to be decided, people are actually doing their work and that should be thought about.

The other thing is that the business community has always been very engaged in Kenya, and I think in this election, certainly in the post-election period, the business community has been very tough to come out and say, listen, we need to get back to work, we need to go and do things. And even you heard the Governor of Kisumu, in ground zero of NASA came out and say in the immediate protest, right after the election decision, basically, we need to get back to work, and we need to start running our

businesses.

And I think there is a sentiment in the Kenyan population that is growing, and you'll see it on the editorial pages, you'll see it in civil society saying, we can no longer be held captive by these two men, these two individuals. That there is a society here we want to just move on and, we, as Kenyans need to make the next step in life and go and get this behind us.

So, there is a bit of fatigue, and I think it's growing, and it certainly is motivating people to say, listen, let's not go to the streets, let's just move on from this.

MR. O'HANLON: Matt has got a point to add, before we go to that. That that makes me think of one thing, so I'm trying to think of how Odinga could possibly plausibly win, and it seems like a pretty high bar in three months' time to go from 54/45 to swapping that. And I guess my question, listening to you JT, is the only plausible narrative that I could think of so far would be that somehow resentment against the political culture leads to the voters just being even more frustrated this time, and punishing the incumbent more than the opposition guy, even though the opposition guy has been around even longer.

MR. TOMASZEWSKI: Yes.

MR. O'HANLON: Is there any other -- maybe you want to comment too Laura, and then we'll wind up here at Matt, but is there is there any other way in which Odinga could plausibly win?

MR. TOMASZEWSKI: Well, of course NASA and Odinga's camp will say that they actually had the votes, and they released their own results from their own agents saying that they actually won the election. So that's one point. So perhaps, I mean we've seen how bad polls can be globally these days in terms of making the right prediction, but I also think the issue of this sort of Odinga having -- he really needs to rally his base and he needs to push his voters out.

And the problem is that the campaigns have taken on two tones, Jubilee is out saying, look, this election cost 10 billion shillings, we have inflation of our food because of a drought so food prices are up, and your food is already expensive, we have all these projects, and debts we have to pay, we have a lot of work that we need to do in this country, and here we are messing around with some presidential election. Let's move on. We have a parliament, we have county governments, let's move on, and look what these annoying Opposition people are doing.

The Opposition is saying, listen, you know, our campaign is exactly as you said these people cannot win elections they can only steal them, and they are doing it again, the court caught them red-handed, and now we need to turn out and vote and get them out of office. And that is really sort of this polar opposites that are being presented to the public.

MR. O'HANLON: Lauren, did you want to comment?

MS. BLANCHARD: Yes. I mean I think, you know, setting aside the allegations of rigging, the opposition needs to be able to turn on its voters, and I think maybe this tells, you know, opposition supporters, you do have an option of effecting things through the ballot box. So, you know, if - and I think also they will have in hindsight, the ability to look and see where turnout was down, and maybe address some of those questions.

I mean, I've raised this in other settings but turnout was, I think, lower than it could have been in some of the urban Opposition strongholds. I think to some extent that was based on fear. You had, I think, families sending women and children home, women who might otherwise be registered to vote in Nairobi and other urban centers, so will they stay around this time? Or do they think that because the Opposition -- because the political environment is so polarized that it's going to be just as potentially dangerous this time around.

But turnout is important. I think also, you know, and again this is a numbers game, so how much it will impact things. Threats against the four Justices who ruled in favor of nullifying the results, those communities who weren't the largest communities, but are important communities, have been very upset about those threats against those justices and have, you know, hit back against the ruling party and people who have been particularly threatening them with personal threats. So how that affects turnout for the Samburu, and some of the people, I think that that will be interesting to watch.

MR. O'HANLON: Great.

MR. CAROTENUTO: Yes. I second all the comments that TJ and Lauren made, particularly the turnout one, because I think it's really up in the air. We just don't know what that turnout -- how that's going to relate to, particularly given that there was an election just last month, or in August I should say. A couple things that we just, you know, I'm sure we'll probably talk about, I mean, there's been a lot of criticism of the Kenyan media leading up to this election. I think that's an important thing to

look for particularly the coming weeks. There was concern that they were really kind of pushing this peace narrative too far in the run up to the election.

They're saying they weren't going to report on things that were, you know, potential flash points, people were criticizing them for that. I think there's been some change since the August 8th Election in that, and some of the critiques that they've had of both the ruling party and the opposition, and that the IEBC just kind of made an agreement on Friday I believe, with the media, that they were going to be reporting from the constituency level, which is kind of a much more important thing for people to see, transparency.

So, that's something to look at moving forward. I hate to cite historical precedence here, given that I don't believe any of us would have thought the Supreme Court, Mike and I were talking about this in July, would have ruled this way, but it is important to note that no incumbent president has ever lost an election in Kenya, and that this ruling did not comment on whether Uhuru was really the winner or not, it was about process. And so moving forward it's really the focus is on that process and transparency, and I think it will continue to be.

MR. O'HANLON: Can I say one observation before we turn to our friends from the Embassy. I'm very, again, impressed by the energy around this issue and especially among Kenyans, and it was just 10 days ago that we were honored here at Brookings, my colleagues in the Africa Growth Initiative, to host President Kagame of Rwanda, who of course is a very accomplished individual in a lot of realms, but he wasn't here to talk about Rwandan internal politics, he was here to talk about the African Union, and it would have been a little harder perhaps to have a forum on Rwandan politics.

I was a Peace Corps Volunteer in the former Zaire, now DRC, and we have a number of forums on that subject here at Brookings, but they have a feel of, you know, endless hoping that the next time will be better, meanwhile the place seems to be sliding back yet again. And of course, Ken, you can go in multiple directions. I'm not trying to sound Pollyannaish, but I'm still encouraged by the net effect of everything and hopeful as we see this month now, this fateful month now begin.

But, sir, with that invitation now, you can feel free, please, if you'd like to offer a comment or two, and then pose any questions, to start us off with the Q&A. And, please, identify yourself for the crowd, if you don't mind.

MR. GACHERU: Thank you very much. My name is David Gacheru. I'm the deputy chief of mission at Kenyan Embassy. Thank you, the panelists, I completely concur with you, I think almost 60 percent of your conversation. I want to start by, Michael, your last comment, you talk about the optimism, and I want to -- I want to give tribute to the strengths of Kenyans and our institutions.

The last few weeks or few months have been many twists and turns, and this person (inaudible) of the disruption and uncertainty, we have remained on course. The independence of the institution have been formed, and our democracy has been strengthened. The resilience is no accident, it's a consequence of the optimism, and the strength of the character Kenyans have shown time and again. But it is also the fruit of a certain -- certainty that comes from strong institution, institution, built patiently over many years.

The strength of the situations lie in the independence and the fidelity to the law. The independence of person control means that they can do their jobs to the best of the abilities, where many failed with the law of the land. Whichever side we are on, the independence of our institutions entails that we won't always get our way, but also give Kenyan, certainly, that our country is governed by law, and to the U.S., or foreign friends, that their investments and their trust in us are safe.

Let us be cognizant that the section of the opposition class, political class acting on their own, and not independent decision to make and interpret laws, the rest of us have to conform, actions are laws for them. It's the rules that have to conform to the elections, not the other way around. That way we have seen planted a (inaudible) or independence body has changed the advice and all that.

And something I had mentioned to some of your colleagues here, I feel, I feel that the adulation of the opposition by the international community, as significant NGOs and think tank fraternity, has made the conduct of these opposition's lack in the sense of proportionality. And towards some of the questions you talked about, if you look coming to the elections six months to the elections, they have used the judiciary 26 times, through the IEBC. And for them if it doesn't go their way, it's either street violence or mass action.

So you have on one side, the opposition, you see the judiciary, to come back and change the constitution, through the judiciary, that's judicial activism. On the other part where you had a government come in, and I only want to make a point of what entails on what the amendment for the

elections are. Very simple. During the court ruling, you found that 34-As were not signed by the presiding officer, that's the last point of election voting process.

Nobody is talking about that in the Opposition, why did the presiding officers did not sign those forms? Why did they use their own forms? That's one of the amendment they want to do. So the presiding officer must sign those forms. The other piece is the Supreme Court ruling also found errors in the constituency level, returning officers using the wrong 34-Bs, or no signing, to include their own form. Why? How come nobody ever asked him, why did those people not do those things? Why do you go back to the top? Why don't you find that out?

That is one -- that the parliament is changing to make sure that those little -- consider returning officers must use the right forms, and sign the right forms. And all these forms, and let's also remind everybody that the content of these forms were not wrong, and the content of these forms, were more in the Opposition areas, and these forms had him in the winning, nobody questioned that.

The other piece is there was an issue of transmission because of the 3G network and 4G network, so some of that, the 34-Bs and 34-As did not arrive on time, in the announcement to reconcile the total voting, and they were announced before those forms arrived. So that's, it's also (inaudible). The Supreme Court also learned that the good Governor demand that the areas -- the electronic (inaudible) fieldwork because of that one -- the corporate, if the leadership of the -- and I think you mentioned that, JT, about where they say that if the leadership of the IEBC is removed in this time, the president don't have the authority to appoint one.

So they are amending the rules that if the IEBC chairman is removed the deputy can take over, that sort of thing. So the rules that they are talking about actually helps or removes, you know, the technology. To me I call it technology ruling that actually for (inaudible) should be announced. So all those things are actually addressed. And they are not addressing (inaudible) for anybody, they are addressing there for anybody who is on the Committee. So it's not so much that the Jubilee is asking for changes on that --

MR. O'HANLON: I'm going to ask you wrap up, please.

MR. GACHERU: Okay.

MR. O'HANLON: Thank you. These are helpful points, but I don't want to go -- I don't

want to have too many. I want to make sure we get the central ones that are most important to you.

MR. GACHERU: Yeah. Yeah. So, you know, I just want to show that the president has been very magnanimous, in reaching out to the opposition now. He's been preaching peace every day, he has reached out to Western Kenya, even where he lost, even those who are (inaudible). He is constantly every day reaching out to people and preaching peace. What is the other party preaching? There is no preaching of peace. And he has really reached out to everybody, and in his campaign he really -- reaching out to everybody, and every day he is advocating for peace. So, I just wanted to honor that.

MR. O'HANLON: Thank you, sir. Would anyone like to respond, or shall we go to some more questions first?

MR. CAROTENUTO: We'll take some more.

MR. O'HANLON: Okay. So let's start here with the woman in the third row, please. I'll take maybe two more in this round, and then we'll have a set of responses.

SPEAKER: Thank you. I agree 100 percent with what you said, and I hold no brief for NASA or Jubilee. I'm an academic. My name is Damaris, I'm a professor, and Echidna global scholar here at Brookings. Two questions and one comment. Since last week they have been a resurgence of some fearful-looking people called Nairobi Business Group that looks like Mungiki, and that is scaring very many people. Of course it's making a lot of jokes in social media, but underneath that it's the seriousness of people resorting to militias when there seems to be a vacuum.

And people are saying, okay, we can also have Maasai, business community, Kisii business community. I just want you to comment on that from a security point of view, and what do you think is the role of the militias at such point in our lives, in our country? The other thing that -- sorry. As an academic now I can't travel anywhere outside the country because the president has to clear me to travel, and this used to happen in the '80s during Moi's time, and we have one of the most liberating constitution as you have said, in Kenya. I want you to comment on that, and --

MR. O'HANLON: Why don't you keep it at that, if you don't mind. I don't want to have too many questions per person.

SPEAKER: Okay.

MR. O'HANLON: Thank you.

SPEAKER: Thank you.

MR. O'HANLON: The gentleman in the row in the baseball cap, yes, and then --

MR. FANUSIE: Thank you very much. My name Yaya Fanusie, with the United States of Africa 2017 Project Task Force. Listen, I want you all to go Google: the elections in Sierra Leone March 17, 1967, in with the opposition, the first time in Africa, won by four parliamentary seats. It was done this way, the officers running the elections in the APC strongholds were informed. The north, the northeast, and the capital. If you rig the elections, and didn't tell us to also intercept it, we are going to kill you and every members of your family. A special unit was set up in the APC and it was assigned to a 24-year-old young man to execute it. I am that person. The election was free and fair, and we need to start doing that in Africa.

MR. O'HANLON: Okay. That was more one of the comments. So I'll take one more before we come to the panel. It will be the gentlemen here in the fifth row, in the light-blue shirt.

SPEAKER: Excuse me. Thank you. Hello, my name is (Inaudible) I'm a journalist here in -- actually in New York. I forget we are not in New York. And I'm Kenyan. One observation I can't help but notice that there's not a single Kenyan on the panel, I wonder if any on there has lived in Kenya.

MR. O'HANLON: I'll stop right there. Kenyans were invited, we couldn't work it out. We went to the Kenyan Embassy for an initial set of comments, and everybody here has lived in Kenya except me.

SPEAKER: Okay. Good to know.

MR. TOMASZEWSKI: I'm married to one, too.

SPEAKER: It's family.

SPEAKER: And may I add, that I also completely agree about 25 percent with what I've heard. But my question is there seems to be this false equivalency between the opposition and the government, and can I posit a possibility in, has anyone considered -- you know it's very often and very common to -- and easy to always come after governments, particularly in Africa, because the assumption is they can't get anything right, which I think is an imperialist view and colonialist view.

However, has anyone considered the possibility of a corrupt opposition, and an

opposition in this case that is using the gains made by Kenyans in independence of institutions, and independent judiciary, and independent commissions right across the board; and whereby perhaps the government was busy trying to implement all this independence, and implement a development agenda, and while the opposition was working in the constitution, in the judiciary, and culminating in this ruling, I noticed that there -- you know there were words bandied around, for example, like threats to the judiciary, nobody has threatened the judiciary.

I think there have been promises to review the ruling, et cetera, using constitutional means, you know, there's a big difference between threats and use of constitutional means. There are constitutional means to remove even the Supreme Court. CJ, there's such rhetoric, here in the United States about activist judiciary, and activist judges, for example, so that's not -- you know, I don't quite understand why that language is used so -- is viewed so differently when applied to African countries, and to Kenya in particular.

For all the intents and purposes, as JT pointed out, he believes the president won, and observers pointed out that as far as they could tell, there would seemed to be no manipulation of election itself --

MR. O'HANLON: Okay. Thank you. Okay. So, let's start with Matt, and just work down the row, and respond whichever you like, please.

MR. CAROTENUTO: Yes. I think there's a lot of overlapping kind of questions. I mean in terms of, you know, what are the issues of this election? I think these issues are being lost. So certainly, you know, one could make the case on August 8 that, you know, there are some things in the Jubilee government that you should really you say were successes, right. And they were campaigning on those successes of economic development of big development projects, of regional security concerns and how they were addressing them, versus what Odinga was trying to sort of put out there as a recipe for change, but I think these are being lost, right.

In the Supreme Court ruling where things they are focusing on the institution, the IEBC is very much on trial. And also the mention of corruption, certainly institutional corruption in Kenya pervades, you know, and is difficult in many levels, and I don't think that is an issue that we can say this is an opposition issue, or a government issue, it is an issue the country is grappling with as a whole. I don't

necessarily know if corruption concerns within the opposition are being manipulated this way although, you know, we could have a debate about that.

In terms of thinking about peace, you know, narratives of peace in Kenya are very important, but they are also politicized, and I think it's important to kind of think about this in this context, what constitutes peaceful political dissent, right? Is it organizing on the streets? Is it putting placards and marching to parliament? Or is it, you know, hate speech? Which is, clearly we have several cases of hate speech running through the courts right now, people have been arrested, but there is a sort of fine line there that Kenyans, I think, are debating about, and it's an important one.

And bringing up the sort of question of militias, and talks of gangs very much brings back, you know, the fears of 2007 where proxy militias were being used for much of this violence. I don't know how we'll see that being played out, but the security forces have been very heavy-handed over the last several weeks, and even leading up into the campaign. So, that brings it back to some of those central questions on what the role of the security forces will be in allowing dissent, and also cracking down on hate speech and potential for real, real violence.

MR. O'HANLON: Lauren?

MS. BLANCHARD: I'll start with the militia question. You know, the role of militias has been a major concern, over the course of a number of elections, and I think we see those concerns rising. You know, the use of hate speech, and an intimidation, and incitement violence -- or incitement language. Again, I've raise this before, but certain ruling party MP who has threatened a manhunt against people in his community who didn't turn out to vote, or who voted for the other guy, that is incitement. That is very dangerous language. And that individual is at the top of the Jubilee campaign for this next election.

So I think that that is a concern. Have there been threats to the judiciary? Yes, there have. This isn't just our opinion up here on the panel, this is the opinion of multiple international judicial organizations, judges and magistrates associations, the New York City Bar Association came out with something on this recently. The Kenyan Judicial Services Institute or a commission, which is headed by the chief justice has raised specific concerns about threats and intimidation.

And in their view, the inaction by the police to investigate those threats and act on them. So I think that these are concerns, you know, we can differ with one another on whether or not the four

justices who ruled one way were right or not. Obviously the two justices who ruled a different way, it would be interesting to see what the seventh judge thinks about all of this. But there were the threats against the independence of the judiciary, in my view, travel restrictions a major concern.

Let's see, how many people have we seen blocked since the elections? You had one of the IEBC Commissioners was blocked, she wasn't able to travel the next day. Minah Keai was blocked and later able to travel. Kalonzo Musyoka, the deputy president candidate for the opposition, blocked from travel.

SPEAKER: He was not blocked, not blocked.

MS. BLANCHARD: Not blocked? Please?

SPEAKER: He was (inaudible).

MS. BLANCHARD: He did leave, but he was originally blocked.

MR. CAROTENUTO: Delayed.

MS. BLANCHARD: What was the delay?

MR. GACHERU: There was no delay at all. It just -- I want to rebut to that one.

MS. BLANCHARD: Please.

MR. GACHERU: Because the direct communication came the following day, actually in saying. Kalonzo actually reached out to him, and asked him, am I allowed to leave? He said, now, you can leave, it's not a problem, even to Uganda.

MS. BLANCHARD: Okay.

MR. GACHERU: So these are some of the miscommunication that we find sometimes, there's a quick to judgment on there's a lack of clarity -- communication on that. And it goes back to a question of putting too much exacting standards on a young democracy, and we have to be very careful on how we put pressure on the government, and how we are really (inaudible) to face the news. We also have to be cognizant of the toxic social media in Kenya, and we cannot rely on that one.

On the question of travelers, people travelling from Kenya, you have to be working with the government, you have to be working -- in a Public Service Commission. If you are a professor and you are traveling, you have nothing to do with the government. And this is once the (inaudible) because of the economic -- the economic repercussion of this is real on 1036, it's big. The economy, we already

lost \$150 billion on Nairobi Stock exchange. There's another \$10 billion again for the elections, so the cost on the government to change means the government is putting a lot of measures to stop the travel expenses.

MR. O'HANLON: Thank you. JT, did you want to comment on this round too?

MR. TOMASZEWSKI: Yes. On the travel restrictions, it is true that Joseph Kinyua, the Head of Civil Service and the president's Chief of Staff, has reiterated a long-standing order that civil servants do need to have clearance from the president in order to travel. It is true that there is some issues within the academic community in terms of wanting to travel, and there have been some media coverage on this, about the impact it's had on Kenyans being involved in international conferences, and studying, and moving.

The argument is economic but some smell a different side of it and, you know, again I'm not one to make that judgment, but there are multiple angles here that are looked at. I would say Mungiki are dangerous, any militia is dangerous. Kenya is not some banana republic at all, it is a lawful democracy, it has serious corruption problems, it has problems of -- you know, of police reform needed, and things like that, but there are institutions in place. There are court hearings, there are bail hearings, things happen.

Now there are a lot of problems, again, I'm not saying that, but I think when you start seeing militia come up that just needs to be stopped. No one should even be entertaining those ideas about their own form of security. Now it does not help when the two co-principals, two of the co-principals of NASA had their security withdrawn, right. So, then they have the situation of, then they hired their own security, then there will be accusation you hired militia, or you brought in, you know, people from South Africa who are working a --

So, it does create, there's lots of politics behind this, and you have to be very careful to draw judgments. The other thing is this issue of a false equivalence, in this issue of corruption. Listen, the opposition and the government certainly have challenges, they are both facing criticisms, as a very polarizing environment, and of course people -- I mean I live in the household with a Kenyan, she has a very clear opinion what she thinks about what's going on in her country, and that is something is very, very passionate about Kenyans, and something that we appreciate.

It goes to their diversity, it goes to the strength of their democracy, that they have these passionate debates, all the way from grade school, even grade school kids can protest in Kenya they really do do it. So, I do think that there is sometimes, we think just about the government, but I don't think that's what's happening here. I mean we are talking about issues that have been debated in public.

The Judicial Service Commission has come out and said that not only the majority justices, but also the minority justices have faced threats to their lives. So yes there are people who are aligned to the opposition who have gone after those two people, that woman and that man. So, we've seen both sides of this actually face some serious problems, and that goes to the bigger question.

Can the court, on its own, as a separate but equal branch of government, stand up and make a ruling and be safe in its own country? And that is something that we have yet to see fully take shape because there are a lot of questions, especially when the budget of security and other provisions for judiciary is being cut by the administration.

So there are a lot of things that are going back and forth here, and that's what I said earlier, in first comment, there's a lot of politics, and it's hard to sort through it all, and certainly the media feeds into it to some degree.

MR. O'HANLON: One more thing I'll state too, in the interest of, you know, this question of balance, is that President Kenyatta, when he was here three years ago for the Africa Leaders Summit, we hosted him at Brookings. So we are not interested in just having Americans talk about these subjects, and we are not interested in denying people a platform, and that was a nice opportunity, and you can still find it on our website.

So, let's go to another round. Let's see, I think I'll start in the back row this time, the two gentlemen there, next to each other, more or less, and then the woman here one row in front of them, will take that group of three.

MR. GREEN: Thank you, all, for your comments. My name is Ben Green. I'm from the State Department. Just two quick questions, speaking on behalf of myself of course. The first one was, just to return to Michael's first question about the trickle down to local elections, I was just curious if this has been primarily opposition component parties in, you know challenging, the races in which they lost. Are we also JP candidates that are challenging them?

The second one, quickly, was regarding the presidential election, obviously we have seen some observers who have noted a lack of a strategic plan on behalf of NASA, it's kind of figuring it out as they go. I'm just curious if there's any sort of possible third way to consider out of this political impasse, as opposed to just either of the presidential contenders winning.

SPEAKER: Thank you. (Inaudible), consultant to PSEC Lab, and others. Two questions. One, what is the Kenyan public perception of the international observers at this point based on that? And the second question is, there was some comment I think Matt made about the media this round pursuing kind of a peace narrative, and I wondered if you could comment a little bit further about that, and that ability are they -- is this affecting news gathering, and the -- Kenyans access to information? Thank you.

MS. MILLS: Hi, everyone. My name is Michelle Mills, I work at the Bureau of International Labor Affairs at Department of Labor, covering 12 countries, Kenya is one that was just added to my portfolio. So, I'm here to learn. Thank you all for being here, and explaining about the elections. I am trying not to take this too much out of the scope of the conversation, but obviously my focus is more on labor rights.

So I'm curious in terms of like thinking about Odinga, the African Union, what does that mean in terms of, you know, the future of Kenya, and participation in the African Union, Somalia for instance, KDF Forces. What does that mean for the country? And also thinking about unions, in general, and their participation in the country with this elections, and external forces, and how that's impacting what's happening in the country in terms of elections? So, if you could touch on a couple of those things considering the labor component of it. Thank You.

MR. O'HANLON: Lauren, do you want to start this round, or do you prefer to --

MS. BLANCHARD: I'll start with the question about the public perception of the observers, it's a great question. I haven't seen any recent polling done like, you know, the credibility or image of international election observers took a hit during this election, and I think that, you know, there were a lot of -- I've said a lot about this, but there were a lot of comments that were taken out of context, there were a lot of -- you know, when the election observers made their initial statements after the elections, two days after the elections but before the results were announced, there were preliminary

results, or preliminary findings, most of these organizations put together about a 15-page sort of finding that was boiled down into sound bites, that were very short and the keywords that were taken away were: credible election processes.

Now what that really sort of meant, if you actually read the documents, was that voting day looked good. You know, most polling stations opened on time, things were orderly, it seemed that things were going sort of well, and that process was credible. What most of those groups left out, or said was sort of still outstanding was this transmission of results, the issue which came to be the major problem that the Court found on.

There are a number of observer missions that are going to be participating in these upcoming elections, the EU I already mentioned, I think the AU will be sending its team back, the Carter Center which probably drew the most fire it was headed by John Kerry, who made some comments that received quite a bit of attention, both in the local press and the international press. You know, I think there's been a lot of soul-searching going on among those observer groups.

There's a lot that observer groups can't see, they can only see what the Election Commission allows them access to, and that is limited, you know. And so even for groups that had observers on the ground for six months beforehand, and who have been there throughout, and who followed the results process through to the end, they can only report on what they can see. And so I think that there are a lot of groups right now who are trying to figure out: how do you deal with sort of the advent of technology?

And what you can't see, and I think you may see with some of these teams that are monitoring in the next election some changes to the composition of their teams so that they can address those concerns. And I think, you know, there is also an onus on the media to pay a little more attention to what else is raised in those observer reports.

And again, the observers need to make sure that they are mentioning this, but most of those groups that reported on August 10, their findings, also raised concerns during the pre-election period. Those results weren't reported on. None of the groups, none of the major groups used the term "free and fair" and yet I saw again, and again, in the press, election observers find the results, or find the election free and fair. So that was an extrapolation of some other words that were used.

On the issue of media and the peace narrative, this is a really interesting topic, there's been some very interesting academic work done on this Access to information, I think this is something that JT has touched on in the past. It's a big concern if there is a feeling among Kenyans that the Kenyan press isn't reporting on what's going on. We saw this in some of the violence that followed the announcement of results. The media seemed a little bit reluctant to report on what was going on, maybe in some cases they didn't have access to some of the areas where you did have some of the heightened tensions and violence.

And as a result information was flowing, instead, through social media. Kenyans are, particularly in urban areas, very online. They are using WhatsApp, they are using Twitter, and the rumor mill can get going very fast, and can get you know manipulated, and I think that that is a real concern and something that the Kenyan media has to grapple with. I think right now they are trying to think through how they report on results, and if they can figure out a way either collectively or on their own to report on results as they are coming up.

Again, we've got some outstanding questions on how the Election Commission is going to be doing that public display of results this time, but it's very important, and when Kenyans are having to rely on social media to get their news that's dangerous, although also informative in some cases. On the issue of Raila Odinga, and the AU, and Somalia, you've got a lot of stuff in that question.

Raila Odinga has said that he is not supportive of the Kenyan deployment in Somalia. What that means in a sort of a timeline, if he were to be elected president, we are not really clear on, is he going to sort of pull troops back right away? I would direct that question to Mr. Odinga. You know how the AU feels about these things? I don't know.

Unions is a very interesting topic, and I think about this, and you probably have some more cogent thoughts on this, but in the context of the nurses' strike and the doctors' strike, and how the government is dealing with those issues right now?

MR. O'HANLON: So, JT over to you, and then we'll finish.

MR. TOMASZEWSKI: I mean, if there's one place in East Africa where we see a vibrant and healthy Union environment, fighting the good fight every day, it is in Kenya, everywhere from the teachers, doctors. I mean the teachers have gone back to the broker table five or six times to get

payment that they were promised, and I think you'll still see a very active union. Of course the unions are undergoing some serious challenges, right, because as with devolution now in some cases they are negotiating with the national government, and in some cases they are negotiating with 47 county governments.

So, it does create some challenges, and I think they're looking at how to engage. Also politically, you know, they're there. I mean they're involved in obviously turnout machines, and picking the right candidates. I won't comment on how they fit into the presidential race. I think it depends, but generally, you know, the incumbent government has a number of cases against the unions, and they are working with the unions on some of these issues, but the unions are not happy.

So I think that, you know, they may naturally ally with the opposition, but that is not necessarily true. There are some unions that have supported Kenyatta and his Jubilee Team, and some of their work, especially with the way that they've dealt with some of the issues. Of mining reform, and making sure that Kenyans are getting the jobs and not foreigners, and things like that, so that some of that stuff is still out there.

I would say in terms of the petitions between down ballot so some of these petitions, whether or not the Supreme Court hearing took place, they were going to petitions, I'm not so familiar for instance with the petition that's been launched against Hassan Joho, Governor of Mombasa, who is NASA, right? So the Jubilee Shabala is saying, you know, he wants to overturn that election. He has brought up the different issues. I don't necessarily -- I think the Supreme Court ruling matters when it matters, and it doesn't when it doesn't.

So depending on whether it works to your advantage you use it, if it doesn't you won't use it. And that that's what I'll say. But there are, you are seeing cases on both sides, you are even seeing NASA on NASA. So, you have Jack Ranguma going in, Senator Anyang' Nyong'o; so, you know -- who is now Governor of Kisumu. So, you are seeing sometimes, it doesn't necessarily matter in the big picture. Of course we haven't really seen it applied yet in some of these rulings.

The international observers, the big challenge with the international observers, and this was something. When I saw Chebukati, come out and announced these election results, not having all the Form 34-As, although someone told him he did, and then he does it two days before he has to. And

then he announces the results, and then the observers the very next day hold their press conferences over at Radisson Blu, one after the other, they are giving their press conferences.

I just knew that this was going to be a problem, because the Commission should have -- whether they thought Raila Odinga was crying wolf again or not, right, he's always launched petitions, they should have taken more time to go through the process. An observer team should have waited a little bit longer to look at this.

Now, while they did have qualifying statements in their statements for an international observer mission to say that they don't understand the context of how quickly the Kenyan media makes sound bites, I'm sorry, Carter Center and Africa Union, I don't give you a pass for that. You have Kenyans on your team, and then how it works.

So, you know, I do think that there will be a greater deal of caution as these results come out this time, and seriously, there are questions that are being asked. And even in IRI, who, we observe elections all over the world, hundreds of them we've done, we are even asking: how do we make these approaches? What lessons can be learned?

And then finally, media. I said this the other day and I'll say it again the media needs to be brave, and they need to step forward, they need to not be so, you know, cautious. I understand the hesitancy they have because of 2007, 2008. I mean, one of the journalists, Joshua arap Sang, went to the ICC with Ruto, we do know that the media can play a very terrible role in fomenting violence.

But also when -- Given the proliferation of social media in the country, when the media is not there presenting facts, and they are allowing the facts to be spread on social media or perceived facts, or the WhatsApp messages, to be informing me, even an outside observer, what's going on over what is really happening, and Citizen TV not showing when there's violence going on in certain parts of Kenya. I think it creates problems and there needs to be a better balance.

Media reform laws have created very high sanctions for journalists who make mistakes, some say that's good but others say, listen, that now makes the journalists, if I'm a journalist, I don't want to spend my entire life savings to pay a fine, and will my paper even stand by me. These are serious questions. I think it's a continuous debate.

MR. O'HANLON: Great.

MR. CAROTENUTO: Yes. And I would second a lot of the comments that we heard up here. I think in the context of the media, right, there's this balance between, you know, doing their civic duty to not fuel violence versus reporting, right, and there were -- You know, this goes back a lot -- a lot of these comments I think are framed in a kind of prospect of historical memory, where people are -- and the international journalists are certainly very guilty of this in a lot of ways, it's just kind of framing any election in Kenya with 2007 as a sort of entry point.

It's a different era, right? Things have changed, but in people's memories that fear is also there, and elections are emotional experiences. And so people are thinking about 2007, they are thinking about the role of social media rumors, and how they fueled violence, and there's maybe an overcorrection in the mainstream Kenya media. In 2013 there was certainly a sort of, you know, a peace narrative that that was, people would come together and say, you know we must promote peace over everything.

And a lot the critics of that said sort of, peace at all cost. What does that mean? It means peace without justice, and in this sense, or if it's -- you know, when you can't go to the streets to protest even peacefully because it may spawn violence. You can't be an outspoken critic of this because it may spawn violence. Now, that seems to be an overcorrection.

Just on another level of sort of the ideas about historical memory, because I think they are filtering into a lot of these discussions, we should note that most of the political elite class is still a product of the Moi era, right, an autocratic rule for 24 years in Kenya. Even in the opposition or the ruling party, and so a lot of the tactics that they are employing, a lot of the things that they're thinking about, are based off of that experience, right.

We should note, you know, opposition leaders were -- some opposition leaders were put into detention, their rhetoric have -- has been quite different than the opposition leader that didn't experience that. And I think that's going to play out, kind of moving forward. It also might play out in terms of how willing the general public is to go along with continued, insecurity-continued concern, and continued protests and petitions against what will inevitably be a petition to this election no matter what the outcome is.

MR. O'HANLON: Just a very quick observation, as we conclude. I was on an IRI Election Observation Mission to Afghanistan in 2009, with our good friend the late Rich Williamson, a

wonderful guy. And we talked as we immediately took stock of what had happened that day on Election Day itself, of what kind of phrase we should use.

And of course election observation missions are famous for liking alliteration right. So the free and fair. Well that was pretty easy to dispense with. I think it took about two or three sentences and then we talked about, you know, competent and credible, and those kind of words. And that's the kind of language I think you were all wrestling with in this case.

MR. TOMASZEWSKI: Yes. Yes.

MS. BLANCHARD: Yes.

MR. O'HANLON: But as a lot of the conversation has gone today it reminds me that maybe even those words are too ambitious, and imply more than you are able to do as an election observer, and maybe something more like orderly and organized is about as much as we should really try to rubber-stamp anything with as observers, at least on the first day of the election after. But I'll leave that to others to figure out as we get ready for October 26.

So if you would please join me in thanking the panel. (Applause)

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