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GENERAL ELECTIONS IN KENYA

ELECTION OBSERVATION DELEGATION

2-6 March 2013

REPORT BY KRZYSZTOF LISEK, CHAIR OF THE DELEGATION

Annexes:

- I. Final programme of the Delegation (including participants' list)
- II. Declaration of Mr Krzysztof Lisek, Chair of the EP Delegation
- III. Preliminary Statement of the EU Election Observation Mission

INTRODUCTION

Following an invitation on 11 April 2012 from the Chair of the Independent Electoral and Boundaries Commission (IEBC) of Kenya and the decision of the High Representative and Vice-President of the Commission Mrs Catherine Ashton on the deployment of an EU Election Observation Mission (EU EOM), the Conference of Presidents of the European Parliament authorised on 17 January 2013 the sending of a delegation to observe the presidential, parliamentary, and local elections in Kenya.

The European Parliament has always attached the greatest importance to the development of the democratic process in Kenya. Though holding elections since 1962 and a multiparty democracy since 1992, the country had serious institutional problems which made it hard for elections to be completed smoothly. After the violent clashes following the Kenyan elections in December 2007, the 2013 General elections - which took place under a completely new legal framework - were of vital importance for the country.

The EU Election Observation Mission, present in Kenya since 19 January 2013, was led by Chief Observer Alojz PETERLE, a former Prime Minister of Slovenia and a Member of the European Parliament. Altogether the EOM deployed 65 observers (from 26 different EU Member States, as well as from Norway and Switzerland) in the country.

A delegation of the European Parliament joined the EU EOM on 2 March. The delegation, led by Mr Krzysztof LISEK, was also composed of Mr Eduard KUKAN, Ms Eleni THEOCHAROUS, Mr Enrique GUERRERO SALOM, Mr Patrice TIROLIEN, Mr Jan MULDER, and Mr Jacek WŁOSOWICZ.

The Delegation wishes to highlight its excellent cooperation with, and express its particular thanks to, the EU Election Observation Mission and the EU Delegation in Kenya.

BACKGROUND

The 2013 elections were the fifth consecutive General Elections after the reintroduction of the multiparty system in Kenya in 1991. In 2007, Mwai Kibaki, the then incumbent President, officially won the presidential elections with 46.4% against the opposition leader, Raila Odinga, who got 44.1% of the votes. After the announcement of the results, widespread violence on an ethnic basis erupted across the country for several weeks. More than 1,200 people were killed and some 300,000 displaced from their homes. Following this, a Kofi Annan-led dialogue resulted in the formation of a coalition government, with Mwai Kibaki as President and Raila Odinga as Prime Minister. This was followed by the adoption of a new constitution in 2010.

Political competition in Kenya continues to settle into a familiar pattern of alliances formed along ethnic lines. For the 2013 elections, the political parties were grouped in coalitions, the main ones being the Jubilee Coalition of Uhuru Kenyatta and William Ruto (both of whom are facing charges for crimes against humanity before the International Criminal

Court) and the Coalition for Reform and Democracy (CORD) alliance of Raila Odinga and Kalonzo Musyoka.

Though Kenya has made efforts to restore national cohesion, fears of renewed tensions remained during the elections, and the political environment was still considered volatile.

ORGANISATION OF THE ELECTIONS

Kenya's electoral framework - based upon a new Constitution and completely rewritten after the 2007 post-election violence, and including most of the recommendations of 2007 EU Election Observation Mission to Kenya and 2008 Kriegler Commission - provided a good basis for the conduct of democratic elections. The 2013 elections therefore constituted the first major test for the new 2010 Constitution, for the many implementing laws (including a new Electoral Act; a Political Parties Act; a Campaign Financing Bill; and the Independent Electoral and Boundary Commission (IEBC) Bill, all from 2011), and for the reformed judiciary.

The main novelties, introduced by the Constitution, include a bicameral parliamentary system, devolved government to 47 counties and elections for six offices in one general election (the President, Senator, Governor, Member of Parliament, Women's Representative, and County Assembly Representatives). Under the new electoral system, a Presidential candidate is elected winner if he obtains a majority (50 % plus one) of the votes and secures at least 25 % of the vote in 24 out of the 47 counties. If not, a run-off between the two most popular candidates is required.

Despite all improvements in the electoral framework, some shortcomings still remained, mainly concerning campaign financing and gender quotas. While it was positive that the new Constitution eliminated gender discrimination and introduced gender quotas in all elective and appointed bodies (by a minimum one third gender requirement), no legal framework was put in place to implement this principle for the 2013 elections. Instead, it was decided that the quota would be implemented progressively by 27 August 2015.

With regard to the electoral administration, the Independent Electoral and Boundaries Commission (established as an independent body by the 2010 Constitution and effectively created in August 2011) enjoyed a high degree of support and trust among the citizens. The IEBC was set up through a long, rigorous and transparent consultation process carried out to elect the commissioners and culminating in the approval by the National Assembly and the President.

The EU EOM noted that the efficiency of the IEBC was sometimes hindered by inconsistencies in the decision-making process, resulting in a series of delays such as a three-month delay of voter registration due to procurement difficulties, late decisions regarding polling stations and distribution of materials. In addition, the IEBC's investment in technology to ensure transparency and efficiency - specifically in relation to voter registration and identification as well as the processing of results - failed to deliver. The collapse of both the Electronic Voter Identification Device (EVID) and the Electronic

Transmission of Results System (ETRS) removed the guarantees which technology was supposed to bring to the elections.

What is more, according to the EU EOM the processing of official results was lacking in transparency. Neither election observers nor party agents had adequate access to the processes in the constituency, county and national tallying centres.

CANDIDATES

There were 59 political parties that competed in the 2013 elections, with eight presidential candidates taking part in the contest. Political competition was characterised by the formation of strategic alliances. Given that the coalitions were organised along ethnic lines and the personalities of the key party leaders, the political platforms/programmes of these alliances participating in the elections did not differ significantly.

The two main contenders in the elections were the Jubilee coalition and the CORD alliance.

The Jubilee coalition was made up of Uhuru Kenyatta's The National Alliance (TNA) and William Ruto's United Republican Party. Both leaders are indicted for crimes against humanity before the International Criminal Court (ICC). This alliance represented a formidable force, combining two of the most important communities - the Kikuyu and the Kalenjin. Nevertheless, relations between these two groups have been historically tense — with competing claims over land-rights in the Rift Valley — and many of the victims of inter-communal violence resulted from clashes between both groups. This clearly raises questions about the longer term stability of this alliance, in particular at the local level.

The Coalition for Reform and Democracy (CORD) alliance was led by Raila Odinga (Orange Democratic Movement) and Kalonzo Musyoka (Wiper Democratic Movement). Their coalition also included a group of leaders from Western Province - Moses Wentangula's FORD-Kenya. These parties represented the Luo, Kamba and Luhya communities and got most of their support from the Coast, Western and Nyanza provinces. The CORD was campaigning on a platform of national solidarity, complemented by a rejection of electing a president that is indicted by the ICC as this would have a negative effect in the country.

A third force — although very far behind the first two — was the Amani coalition led by Deputy Prime Minister and political veteran Musava Mudavadi. A former Odinga ally, Mudavadi briefly joined the Jubilee coalition but left when he was not accepted as Presidential candidate.

It should be pointed out that the level of participation of women as candidates in these elections was very disappointing. The fact that the gender quota did not apply for these elections had a de-motivating effect on the parties in their efforts to achieve equality in the candidate nomination process. Of 232 candidates for 47 governor seats, only six candidates were women (2.58%). Out of the total number of 240 candidates for 47 elected Senate positions, 20 candidates were women (8.3%).

ELECTION OBSERVATION

Civil society was very active in election observation, thus contributing to increased transparency before and on Election Day. The largest domestic group - the Elections Observation Group (ELOG), consisting of 11 NGOs - observed the voter registration process and deployed thousands of observers on Election Day. ELOG also conducted a Parallel Vote Tabulation.

Besides the EU EOM, other international observers were also deployed in the country, including teams from the Carter Center, East African Community, African Union and the Commonwealth. Prior to and after Election Day, the EU EOM held coordinating meetings with the other international observer organisations in the country.

PROGRAMME OF THE EP DELEGATION

Before Election Day, the EP Delegation met the EU EOM's Core Team and the Chief Observer Alojz Peterle which provided a full briefing on the pre-electoral situation in Kenya. The Delegation also met with the EU Head of Delegation in Kenya, Ambassador Briet, and the Member States' Ambassadors. This meeting was rather interesting and important for the EP election observation Delegation, in view of the fact that Member States' officials in Kenya, as well as the international community as a whole, were being accused of impartiality and interfering with the elections by the Jubilee Alliance frontrunners Uhuru Kenyatta and William Ruto.

In order to have a general overview of Kenya's political landscape, the Delegation held meetings with several candidates and political party leaders, the Chairman of the Independent Electoral and Boundaries Commission, as well as civil society representatives. The Head of the EP Delegation, Mr Lisek, also participated in pre- and post-electoral coordination meeting of the different international election observation organisations present in the country.

ELECTION DAY

On a largely peaceful Election Day, the EP delegation split into three groups to observe in Nairobi and Naivasha. The three teams observed from the opening (6:00 a.m.) to the closing and counting. All EP teams deployed reached similar conclusions, which were in accordance with the EU EOM observations.

- Election Day kicked-off slowly, with some polling stations delaying the opening due to malfunctioning of the Electronic Voter Identification Device. As a result, in many polling stations the paper Voter List was used.
- Voting and counting took place in a generally peaceful and calm atmosphere, even if the day started with the tragic deaths of Kenyans, including police and polling station agents, as well as Red Cross staff in a violent attack in Mombasa.
- Participation rate was very high, with people orderly queuing in front of the polling stations to cast their vote.

- Polling procedures were executed in a transparent manner, with domestic observers and party agents closely following the voting and counting.
- Polling staff was competent and efficient, which contributed to the successful Election Day.
- Women played a very active role as polling station managers, agents and observers on Election Day.

As already mentioned, election observers unfortunately did not have adequate access to observe the tallying processes.

After Election Day, the EP delegation held an internal meeting to discuss its observations. A debriefing with Chief Observer Peterle and the EU EOM Core Team also took place.

JOINT PRESS CONFERENCE

On Wednesday 6 March, the Chief Observer Alojz Peterle presented the preliminary statement of the EU EOM and Mr Lisek spoke on behalf of the EP delegation, in his capacity as Chair of this delegation.

Mr Lisek pointed out that the European Parliament Delegation was impressed by the active engagement of the people of Kenya in the electoral process. The Delegation witnessed the confidence of Kenyans in the IEBC, the transparency and commitment of the staff at the polling stations as well as the determination and patience of the voters.

At the same time, Mr Lisek encouraged the Kenyan authorities to address, in the near future, the shortcomings of these elections which included problems with the technology used on E-Day; the unacceptably high number of disenfranchised especially amongst the youth; as well as the very weak participation of women as candidates in the elections. Finally, he underlined that these elections - being rather calm and orderly so far - were a good basis for erasing the painful memories of 2007 and opening the way to long-lasting peace and stability. For this to be achieved however, all political stakeholders and voters must respect the results of the election and address any complaints they have through the rule of law.

FINAL RESULTS

According to the Independent Electoral and Boundaries Commission, a record 85,91% of Kenya's 14.3 million registered voters cast their ballots on Election Day.

On 9 March, Uhuru Kenyatta was declared the President Elect of Kenya by the IEBC. Kenyatta received 6,173,433 votes, officially representing 50.07% of the total votes cast, with 25% in 32 of Kenya's 47 Counties. His rival, CORD's Raila Odinga, won 5,340,546 votes, representing 43.31%.

Presidential Candidate/ Running mate	Coalition/ Party	Popular Vote	% of Cast Votes	% of Valid Votes
Uhuru Kenyatta/ William Ruto	Jubilee Alliance/TNA	6,173,433	50.07%	50.51%
Raila Odinga/ Kalonzo Musyoka	Coalition for Reforms and Democracy/ODM	5,340,546	43.31%	43.70%
Musalia Mudavadi/ Jeremiah Ngayu Kioni	Amani Coalition/UDF	483,981	3.93%	3.96%
Peter Kenneth/ Ronald Osumba	Eagle Alliance/ KNC	72,786	0.59%	0.60%
Mohammed Abduba Dida/ Joshua Odongo Onono	Alliance for Real Change	52,848	0.43%	0.43%
Martha Karua/ Augustine Lotodo	National Rainbow Coalition-Kenya	43,881	0.36%	0.36%
James ole Kiyiapi/ Winnie Kaburu	Restore and Build Kenya	40,998	0.33%	0.34%
Paul Muite/ Shem Ochuodho	Safina Party	12,580	0.10%	0.10%
Votes Cast			12,330,028	100%
Valid votes			12,221,053	99.12%
Spoilt votes			108,975	0.88%

Voter turnout 85.91% (Registered Voters: 14,352,533)

The results for Governor, Senator and National Assembly also illustrated the tight race between the CORD and Jubilee alliances. Jubilee dominates the National Assembly with 167 elected members against 141 for CORD (out of 349 seats in total), and therefore does not have an absolute majority. There is no clear majority in the Senate, where the two main alliances CORD and Jubilee have 20 and 21 elected senators respectively. Given this context, the smaller alliances and political parties, such as Amani Coalition will be able to play a decisive role during negotiations for majority control of the Senate and National Assembly.

At the same time, despite affirmative action, out of the elected 290 National Assembly members only 16 were women (5.5%). Together with the 47 women representatives and 4 women nominated to represent special interests, the current National Assembly has 67 women, i.e. 19% of the total 350 National Assembly members. No woman was elected as senator (outside of the 16 seats reserved for women) or governor.

The announcement of the presidential results was received very differently by the Jubilee and CORD Alliances. While the Jubilee accepted the election results, CORD challenged their validity and, following the provisions of the Constitution, filed a petition at the

Supreme Court that accused the IEBC of failing to conduct credible elections. On 30 March, in a unanimous ruling the six judges of the Supreme Court upheld Jubilee leader Uhuru Kenyatta's victory as president. They proclaimed that the elections were conducted in compliance with the constitution and the law. CORD announced that the Supreme Court ignored anomalies and discrepancies detected during the scrutiny and re-tallying of presidential votes, but noted that - as the Supreme Court was the final arbitrator in presidential election disputes - it will abide by its decision.

After the Supreme Court upheld the election of Uhuru Kenyatta as president, violence erupted in the Kisumu County, as a result of which 2 people died and some 60 people were displaced. As a whole however, the post-election situation in the country remained calm.

CONCLUSIONS AND RECOMMENDATIONS

The Election Observation Mission of the European Union remained in Kenya until the end of the post-election process and will present a final report on the elections in May 2013. This report will contain recommendations to the authorities of Kenya, aiming to improve certain aspects of the electoral process for future elections.

The election observation Delegation of the European Parliament as part of long-term EU mission was an important tool in the evaluation of the electoral situation in Kenya. The delegation recommends that the Democracy Support and Election Coordination Group, the Committee on Foreign Affairs, the Committee on Development and the relevant Delegations monitor the findings and recommendations of the final report of the EU EOM and use it as a basis for their political dialogue with Kenya.

EUROPEAN PARLIAMENT
GENERAL ELECTIONS IN KENYA
ELECTION OBSERVATION DELEGATION

1-6 March 2013

DRAFT PROGRAMME

Members

Mr Krzysztof LISEK PL (EPP)
Mr Eduard KUKAN SK (EPP)
Ms Eleni THEOCHAROUS CY (EPP)
Mr Enrique GUERRERO SALOM ES (S&D)
Mr Patrice TIROLIEN FR (S&D)
Mr Jan MULDER NL (ALDE)
Mr Jacek WŁOSOWICZ PL (EFD)

Secretariat

Ms Nikolina VASSILEVA, Administrator
Mr Gerrard Quille, Administrator
Ms Alyson WOOD, Assistant

Interpreters

Ms Marie-Aida DIOPE-WAN (*Team leader*)
Mr Jacques-Etienne COLY

Friday, 1 March

all day Arrival of Members in Nairobi and transfer to the hotel

Saturday, 2 March

08:45 hrs Depart hotel for EU EOM Headquarters

09:00 hrs Meeting with the Chief Observer, Mr Alojz PETERLE
Briefing by the Core Team of the EU Election Observation Mission
- Analysis of the political situation with reference to general elections
- Analysis of the electoral and legal situation
- Media
- Security
Venue: EU EOM Headquarters, 7th floor

10:30 hrs Depart for EU Delegation residence

11:00 hrs Meeting with Ambassador Lodewijk Briet, Head of EU Delegation in Kenya,
and with the Heads of EU missions
Venue: EU Delegation residence, Muthaiga

12:30 hrs Depart for Norfolk Hotel

Lunch break

14:00hrs ***EP Head of Delegation only***
Pre-election Observers' coordination meeting
Venue: Norfolk Hotel

15:00hrs Meeting with Mr Ahmed Issack Hassan, Chairman of the Independent
Electoral and Boundaries Commission (IEBC)
Venue: Norfolk Hotel

16:00 hrs Depart for Sankara Hotel for EU EOM Headquarters

17:15hrs Meeting with Mr Tom Wolf, Research analyst for IPSOS-Synovate/KENYA,
and Mr Ken Flottman, AFRICOG
Venue: EU EOM Headquarters, 7th floor

19:00 hrs Depart to Sankara hotel

Sunday, 3 March

- 10:30hrs Meeting with the Coalition for Reform and Democracy (CORD) representatives - Franklin BETT, Minister for Roads
Venue: CORD Headquarters
- 11:30hrs-12:30hrs SAFINA Presidential candidate Paul Muite
Venue: SAFINA Headquarters, Lavington
- Lunch break
- 14:30hrs Visit of the Uchaguzi project (Ngong Road)
Venue: 4th Floor Bishop Magua Centre Ngong Road
- 16:00hrs Meeting with Sarah Muhoya (programme officer for gender and inclusivity), Centre for Multiparty Democracy
Venue: CMD HQ, city center
- 17:00hrs Visit of the Women Situation Room Kenya (a successful African-wide initiative promoting peace, dialogue and women involvement in elections)
Venue: Hotel Intercontinental
- 17:45 hrs Briefing with LTOs in charge of the area chosen to be observed
Venue: EU EOM Headquarters, 7th floor

Monday, 4 March: Election Day

- 05:15 Depart for Team 3 to Naivasha
- 05:30 hrs Depart hotel for team 1 and Team 2
- all day Election observation
- 13:00hrs Lunch with EEAS Deputy Secretary-General Maciej Popowski and the EU HoD (*for MEPs in Nairobi on E-day*)
Venue: Muthaiga Club
- evening Return to Nairobi (*for the deployed*)

Tuesday, 5 March

- 08:00hrs-09:30hrs Debriefing with the Chief Observer and the EU EOM
Venue: EU EOM Headquarters, 7th floor

- 10:00hrs-11:00hrs *EP Head of Delegation only*
Post Election Observers Coordination Meeting
- 14:00hrs-15:00hrs Debriefing with the EU HoD and Heads of Missions
Venue: EU Delegation headquarters
- 16:00hrs Debriefing of the EP delegation on the election observation from all three teams

Wednesday, 6 March

- 11:00hrs Joint press conference, presentation of the preliminary statement
Venue: New Stanley Hotel
- Departure of Delegation for Europe*

4 March Elections in Kenya

Declaration of Krzysztof Lisek, Head of the EP Delegation

Ladies and gentlemen of the press,

the world's eyes focussed on Kenya's 4th of March elections -and the people of Kenya have responded with an impressive engagement on Election Day !

The European Parliament - the only directly elected body of the European Union and representing 500 million European citizens - closely followed these crucial elections for the country. As Chairman of the European Parliament's election observation delegation to Kenya, I have the honour of speaking on behalf of my colleagues, who are coming from six different European countries and are representing four political groups of the Parliament.

During our stay in the country, we met the electoral authorities, representatives of political parties and civil society, as well as observing in Nairobi and in Naivasha on Election Day.

First of all, I would like to align ourselves with the conclusions of the European Union Election Observation Mission and fully endorse the findings presented by the Chief Observer, Mr Alojz Peterle.

According to our observations, the Election Day was largely calm and orderly; even if the day started with the tragic deaths of Kenyans, including police and polling station agents, as well as Red Cross staff in a violent attack in Mombasa. I extend my condolences to the family and loved ones of those killed.

Despite some organisational problems, which resulted in delays at polling stations as well as unnecessarily long queues, Kenya's stakeholders endeavoured to run a successful election. During Election Day we witnessed the confidence of Kenyans in the Independent Electoral and Boundaries Commission (IEBC), the transparency and commitment of the staff at the polling stations as well as the determination and patience of the voters.

There are certainly lessons that can be learned, such as the need to test technology thoroughly in advance, the unacceptably high number of disenfranchised especially amongst the youth, and the need to manage queues outside polling stations. Of course, long queues do not merely indicate logistical problems; they are a sign of something encouraging - which is the clear interest of Kenyans to take responsibility for their future by participating in the elections.

We have also seen that women in Kenya have participated in large numbers as voters and in the organisation of the elections. But we would also like to see more women in positions of political leadership at all levels. Therefore we call for the speedy realisation of the principles in the Kenyan Constitution on gender representation in all elective and appointed bodies.

The fact that these elections have so far been rather calm and orderly is a good basis for erasing the painful memories of 2007 and opening the way to long-lasting peace and stability. In order to achieve this all political stakeholders and voters must respect the results of the election and any complaints addressed through the rule of law.

I also want to say that as representatives of European citizens we know that the path to lasting peace is long and difficult. But it can be achieved as has recently been recognised in the award to the EU of the Nobel Peace Prize. We in the European Parliament are ready to work with Kenya in building a prosperous and peaceful future, for the common benefit of our peoples.

To conclude, I would like to point out that the European Parliament's election observation work does not end today. We will pay close attention to the post-electoral situation in the country, and will follow up on the final report of the European Election Observation Mission and its recommendations.

Thank you very much.



PRELIMINARY STATEMENT

Kenyans demonstrate strong commitment to democratic elections

Nairobi, 6 March 2013

Summary

- Kenya's General Elections were characterised by a huge society-wide push for peaceful, transparent and credible elections. Kenyans should be congratulated for their civic pride and responsibility, queuing patiently for long hours to cast their vote. While several serious violent incidents occurred in some parts of the country, overall the atmosphere was calm and the democratic spirit of Kenyans prevailed.
- These elections were the first real test of Kenya's new Constitution, new electoral framework and reformed judiciary. It was an ambitious undertaking to elect the president, the national assembly, the senate, governors and county assemblies in one day. This called for huge efforts on the part of the Independent Electoral and Boundaries Commission (IEBC), as well as dedication on the part of Kenya's electorate.
- Throughout the electoral preparations, the IEBC retained the electorate's trust. Nonetheless, the IEBC's inconsistent decision making mechanisms drew it into a series of delays. The IEBC and its staff succeeded in overcoming the technical and operational difficulties which arose on Election Day to ensure that the integrity of the vote was protected. The counting and tabulation are still ongoing and represent a crucial part of the process, which EU election observers are following closely around the country.
- Civil society played an active and positive role in supporting the electoral process, with young people playing an important part. Kenya's state commissions, constitutionally responsible for monitoring and protecting equality and human rights, remained independent and constructive throughout the election.
- Freedom of speech in the media was respected. The media were active in advocating for a peaceful process. They offered extensive coverage of elections and voters were able to access information about contestants and compare candidates in the broadcast debates.
- Despite the quota system and constitutional principles for affirmative action, women's participation as candidates was disappointingly low. Even so, women were well represented in the electoral administration and committed as voters.
- Some Kenyan communities and marginalised groups remain disenfranchised as a result of not having national ID cards. In addition more than 3m eligible voters were not registered during the biometric voter registration process and were therefore unable to vote in these elections.
- A negative consequence of the amended timelines in the Elections Act was that some candidates who won their High Court bid to be on the ballot were still excluded.

Background

The 2013 General Elections were the fifth since the re-introduction of the multiparty system in Kenya in 1991. They were held against the backdrop of the 2007 post-election violence and have constituted the first major test for the Constitution, for the many implementing laws, and for the reformed judiciary. Most of the recommendations of 2007 European Union Election Observation Mission (EU EOM) to Kenya and 2008 Kriegler Commission were integrated into the Constitution and the Elections Act. The Constitution introduced a bicameral parliamentary system, devolved government to 47 counties and introduced elections for six offices in one general election: the President, Senator, Governor, Member of Parliament, Women's Representative, and County Assembly Representatives.

In all, 59 political parties registered 12,483 candidates for the 1,882 elective positions. In the run up to the election, political competition was characterised by the formation of strategic alliances between the major players (Amani coalition, Eagle alliance, Coalition for Reform and Democracy alliance and Jubilee coalition). As a sign of commitment to peaceful campaigning and acceptance of results, political parties and candidates signed an Electoral Code of Conduct, and promised that any complaints would be dealt with through the courts.

Legal Framework

Kenya's electoral legal framework has been completely rewritten, the judiciary reformed through a radical vetting procedure and the dispute resolution mechanisms much expanded. The new transformed framework is in accord with regional and international commitments for the conduct of democratic elections. In addition Kenya has ratified the major international instruments which include electoral rights, and under the 2010 Constitution these treaty obligations are incorporated directly into Kenyan law at ratification.

While the new electoral laws are comprehensive, there remain shortcomings particularly in the area of campaign and party financing; there is no statutory mechanism to implement the right to access information, and an unclear structure to implement integrity vetting of candidates. The reformed judiciary has shown itself to be active and protective of election rights and enjoys high confidence among citizens.

The Supreme Court's opinion stating that the constitutional gender quota should be applied progressively by 2015 and therefore that it does not apply fully to these elections was pragmatic given the lack of legislation passed to support its implementation. However it must be regarded as a setback to the achievement of Kenya's international and regional commitments to achieving gender equality. It had the effect of demotivating parties in their efforts to achieve equality in the candidate nomination process.

The Elections Act originally set out a coherent structure of timelines to allow for internal party competitions, nominations to the IEBC, checking of qualifications and provided time for disputes relating to these steps. However amendments introduced by Kenya's previous parliament had a highly detrimental effect on these timelines, truncating them to the degree that there was no time for disputes over nominations to be resolved or for the vetting of candidates' integrity.

Election Administration

The IEBC was charged with simultaneously administering six nationwide elections; the volume and complexity of its tasks have been extraordinary. The Commission's competent handling of the 2010 Referendum and 11 by-elections prior to its official establishment had helped establish its credentials, and it was able to retain stakeholders' trust, most importantly with respect to its impartiality.

However, the IEBC's efficiency was sometimes hindered by the lack of a consistent decision-making process, resulting in a series of delays. Beginning with a three-month delay of voter registration as a result of procurement difficulties, key elements of the electoral framework were carried out in evermore compressed timeframes and too close to polling to ensure steady implementation. In the last few weeks of preparations, endeavours such as recruitment of polling staff and the distribution of materials were made more difficult in the absence of finalised decisions about polling stations.

The IEBC's investment in technology to ensure transparency and efficiency inspired crucial public trust, specifically in relation to voter registration and identification, and the processing of results. However, some of the confidence-building advantages of technology could equally have been achieved by more frequent and detailed communications to the electorate, alongside more precise, comprehensive and widely-disseminated published procedures covering all stages of the electoral process.

Voter Education was started late for such a complex election process. The IEBC carried out its own programmes as well as accrediting other organisations to do so. However there was little evidence of effective voter education until the IEBC launched its ward-based programme one month before polling. While the visible voter information in the media came only about two weeks before the elections, it was not limited to spots and also involved good quality programmes addressing voters' understanding of voting procedures.

Voter Registration

The Constitution establishes extremely inclusive criteria for the right to vote. In practice however, the Elections Act stipulates that qualifying age and citizenship must be proven by possession of a National Identity Card and not all citizens have one. It is estimated that some 3m Kenyan citizens do not have ID cards and were thus unable to register.

Biometric Voter Registration (BVR) was carried out in order to prioritise accuracy and reliability of the register for the 2013 General Elections, and this approach significantly contributed to the credibility of the Voter Register. The final National Voter Register lists over 14m people, which constitutes an improvement over registration for the 2010 Referendum. However delays in the process led to curtailed registration and verification periods. Since the Voter Register is a cornerstone of any election process and requires significant mobilisation, it is regrettable that the time available was shortened. Several amendments were made to the Elections Act to reflect the shortened timeframe, including setting a deadline for publication just 14 days before polling.

This deadline was impractical given how vital the Voter Register is for planning other elements of election administration.

Registration of Candidates and Political Parties

Nominations for the political party primaries took place for the first time in the new electoral framework in an atmosphere of intense competition. The party primaries were marred by some serious if localised violent incidents. The way the political party nomination process was carried out led to party hopping and was also discriminatory against women and marginalised groups.

Orange Democratic Movement and The National Alliance emerged as the two major political parties and eight presidential candidates and their running mates were cleared by the IEBC to run. Women's participation as candidates in the General Elections was disappointingly low. Out of 237 candidates for 47 governor positions, only seven candidates are women (3%). Out of total number of 244 candidates for 47 elected Senate positions, 19 candidates are women (8%). Out of 9,603 candidates for county assembly 697 candidates were women (7%).

Campaign Environment

EU observers reported a calm election campaign with respect for freedom of expression, assembly and movement for political parties and candidates around the country. Some isolated cases of destruction of campaign materials were observed which had a negligible impact on the electoral atmosphere. The most serious incidents took place in Meru and Embu on 14-15 February during CORD presidential rallies which were disrupted by a number of rival supporters. Several instances of intimidation of women candidates and their supporters were reported.

An unequal playing field was evident throughout the campaign. This was exacerbated by uncertainty over the exact start date of the campaign, which was never officially announced by the IEBC, giving the advantage to those parties which could afford to finance a longer campaign period. The Jubilee coalition and the CORD alliance were the most dominant campaigners, enjoying more media coverage and clearly having more financial resources. Larger parties used all available means to campaign: local radio stations and newspapers, social media platforms, banners and billboards, rallies, caravans with music, distribution of visibility materials, community meetings and door-to-door campaigning. The handing out of money to voters was directly observed by the EU EOM during rallies.

Major campaign themes included land reform and tribal identity in attempts to split voters along ethnic lines and according to historical land grievances. Political parties used these issues to boost their popularity, even though they risked dividing Kenyans. Nevertheless, the candidates also debated on key public policies and good governance, especially during the two presidential debates which were held in February.

Media

Freedom of speech in the media was respected. Overall, the media gave extensive coverage of the elections, voters were able to access information about key contestants and they could also compare presidential and gubernatorial candidates in the televised debates. Broadcast media were very active in promoting voter education in the last two weeks of the campaign. However, there were also a few cases of journalists who were intimidated or prevented from conducting their work.

The national media focused predominantly on the two leading coalitions. Most vernacular radio stations monitored by the EU EOM showed a preference in terms of time offered to one or the other of the two front running coalitions. Negative media coverage was usually the result of critical remarks by political opponents, rather than bias from the media. The access of less prominent parties and contestants to the media was limited, with a lack of financial means being the main discriminatory factor.

The state-owned Kenya Broadcasting Corporation (KBC) gave more coverage to the two major alliances, but it also offered free significant segments of time to other contesting parties and maintained generally equitable coverage of the presidential candidates. KBC provided free airtime to key contestants and parties, but it was not organised in such a way that all parties could benefit.

The broadcast media played an active and important role in advocating for peaceful elections, and tended to filter inflammatory messages reportedly articulated by politicians in their campaign rallies. In seeking to comply with the restrictive legal framework on dissemination of hate speech, they may at times have limited public awareness of the negative tone of some of the campaigning. Some media did not respect either the ban on publication of opinion polls within five days of Election Day or the campaign silence period.

Participation of marginalised groups

An overly bureaucratic and lengthy procedure for obtaining ID cards caused minority groups and indigenous communities to face difficulties in registering as voters. This was borne out by significant discrepancies in the number of voters registered in border counties in comparison to urban areas. For example, while in Turkana on average just 30% of the population registered to vote, in central areas the number was close to 100%.

The constitutional principle of providing representation for minority and marginalised communities through the system of special seats has not been fully implemented. The lists of nominated special seats were published late due to the fact that some political parties failed to comply with the legal requirements relating to the gender, age and special interest groups quota. The High Court decided that it was constitutional for the Elections Act to provide that candidates for president or deputy president can also be on the list for special seats.

Civil society and election observer groups

Civil society played a positive role in Kenya's electoral process by managing voter education campaigns, awareness raising programmes and peace promotion events. Special road shows, caravans, debates and trainings were organised throughout the country to promote peace by religious leaders, non-governmental organisations as well public bodies, mainly via Peace Committees. Moreover, many mass prayers took place, including one which gathered six presidential candidates and was widely covered in the media.

The IEBC facilitated the activities of international and national observer groups. Over 50 Kenyan citizen observer organisations were accredited by the IEBC, of which the largest and most long-term was the Elections Observation Group (ELOG), a permanent platform of civil society organisations which began long-term observation in November 2012 with 442 observers in all constituencies. On Election Day, ELOG deployed over 5,500 observers across the country, as well as 1,800 observers who carried out Parallel Voting Tabulation.

Electoral Dispute Resolution

The electoral framework provides strict deadlines for the resolution of electoral disputes to achieve effective electoral justice. However the new legislation on dispute resolution is complex and created confusion among complainants. The competency for electoral disputes is shared between the IEBC, the Political Parties Disputes Tribunal and the courts. Even though the mandate of the election commission includes the regulation of the nomination process, it adopted a passive stance, stating that it was not responsible for the outcome of nominations. It was regrettable that the IEBC cleared some candidates nominated after the legal deadline.

The time left to deal with complaints following the nominations process was clearly too short. After the IEBC dispute resolution mechanism was completed, more than 50 out of 207 cases were appealed to the High Court. This resulted in some court decisions to reinstate or remove around 10 candidates from the ballots. With the deadline for printing ballots approaching and no mechanism in the law to postpone, the courts gave the IEBC the option of proceeding with the disputed ballots and allowing petitions after the elections. This could have been avoided if nomination and dispute timelines had been sufficient in advance of the election.

Polling and Counting

On Election Day, polling was marred in Coast and North Eastern by attacks which in some cases involved significant loss of life. Violent incidents remained isolated and did not overshadow the spirit of the day. Polling day was largely characterised by a high turnout of motivated voters waiting for many hours, most often with great patience and fortitude.

In roughly half of polling stations observed, the Electronic Voter Identification Device did not work: instead voters were identified, according to procedures, by their identity documents and on

the paper Voter List. In part thanks to the IEBC's swift public statement, citizens accepted this solution with equanimity.

Polling stations were adequately staffed, opening and polling procedures were generally followed, and EU EOM observers considered that in most of the stations visited, the overall conduct of operations was good. Nonetheless, in a third of cases EU EOM observers found that secrecy of vote was not sufficiently protected, mainly because of the way polling booths were arranged.

The speed with which large numbers of voters could proceed to vote and leave depended in part on the number of polling booths in each station, which varied significantly. Most polling stations attended by EU EOM observers closed within an hour of the official closing time and in all cases counting took place in a peaceful atmosphere. Closing and counting procedures were respected, including correct allocation of votes to candidates, determining valid and invalid ballots and the procedures for disputed ballots.

EU EOM observers considered that in all the polling stations attended, the overall conduct of operations was good and that the recorded results reflected the will of voters. Party agents were able to attend counting and observe procedures unhindered but in nearly half of polling stations observed, not all party agents received a copy of the results forms. Electronic transmission of provisional results was only successfully carried out in a small number of the polling stations attended by EU EOM observers, with failures occurring most often because the network was congested. The EU EOM is observing tallying of official results at constituency, county and national tally centres.

The European Union Election Observation Mission (EU EOM) has been present in Kenya since 19 January 2013 following an invitation from the Independent Electoral and Boundaries Commission. The Mission is led by Chief Observer, Alojz Peterle, Member of the European Parliament (Slovenia). In total, the EU EOM deployed 65 observers from 26 EU Member States, Norway and Switzerland across the country to assess the whole electoral process in accordance with international and regional commitments for elections as well as the laws of Kenya. A delegation of members of the European Parliament, headed by Krzysztof Lisek MEP, also joined the mission and fully endorses this Statement. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005. The EU EOM will remain in country to observe post election developments and the tabulation of results and will publish a final report, containing detailed recommendations, within two months of the conclusion of the electoral process. The EU EOM wishes to express its appreciation to the Independent Electoral and Boundaries Commission and other authorities, political parties and civil society as well as the people of Kenya for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Union to Kenya and the European Union member states' diplomatic missions for their support throughout.

An electronic version of this Preliminary Statement is available on the Mission website www.eueom.eu/kenya2013. For results of the EU EOM media monitoring analysis, please visit the mission website link <http://www.eueom.eu/eu-eom-kenya-2013/media>. For further information and interview requests please contact: Peter Visnovitz, EU EOM Press Officer, Mobile: +254 (0) 7249 68788, Email: peter.visnovitz@eueomkenya.eu.

European Union Election Observation Mission
5th Floor, Block 1, Eden Square, Chiromo Rd, Westlands, Nairobi
Tel: +254 202 6997 48/53/54 Fax: +254 202 6997 61
Email: info@eueomkenya.eu
