

Preliminary Statement – Kenya 2002

Elections 2002 mark an important step forward in the process of democratic development in Kenya

The European Union Election Observation Mission (EU EOM) has been present in Kenya since 19 November 2002, following an invitation from the Kenyan government. The Mission is led by Chief Observer Mr. Anders Wijkman from Sweden, member of the European Parliament and vice-chairman of its committee for development and cooperation. In total, the EU EOM dispatched over 160 observers throughout Kenya to observe the whole electoral process and in particular polling and counting. Amongst these observers was a delegation of three members of the European Parliament led by Emma, Baroness Nicholson. They concur with the conclusions of this preliminary statement. A delegation of five members of the ACP-EU Joint Parliamentary Assembly, jointly led by Fode Sylla, member of the European Parliament, and Beatrice Kiraso, member of the parliament of Uganda, were also present as observers.

PRELIMINARY CONCLUSIONS

These elections mark an important step forward in the process of the development of democracy in Kenya. The people of Kenya have generally been able to cast their votes freely for the candidates of their choice. Political parties were able to campaign actively in a far more peaceful and conducive atmosphere than in previous elections. Notwithstanding some incidents of violence and organisational shortcomings, the overall conduct of the elections constitute an example for other countries in the region.

Despite shortcomings, the print and the electronic media, both public and private, generally offered extensive and diverse coverage of the political campaign.

A number of improvements to the election legislation were introduced prior to the elections. Regrettably, some of these, like continuous voter registration, came too late to be implemented for these elections.

On Election Day, voters turned out in a peaceful and orderly manner. Party agents, as well as domestic and international observers, were present in nearly all polling stations.

The main problem experienced on Election Day were deficiencies in the voters register and the confusing and inconsistent approach adopted by the Electoral Commission of Kenya (ECK) and its polling station officials in dealing with this issue.

The new legislation requiring the counting of the votes at the polling stations has improved the openness and transparency of the democratic process. Counting of the votes has taken place in a well organised manner.

Tabulation of results is still ongoing and the final result of the elections still needs to be declared by the ECK. The EU EOM will continue to observe this process and will produce a final report, which will contain in more detail its findings on the entire electoral process, as well as recommendations for further improvement of the democratic process.

PRELIMINARY FINDINGS

Election administration

In general, the ECK and its staff were well equipped for their task and generally prepared for the elections. Within the resources available to it, the ECK has managed to conduct reasonably well organised elections. The cooperation and openness of the ECK has greatly facilitated the work of the EU EOM.

The staff recruited by the ECK appeared generally competent, well trained and understood and performed their tasks in a responsible and impartial manner.

The counting of votes took place at the polling stations rather than at the constituency centre. This has improved the openness and transparency of the electoral process.

On certain occasions the ECK took appropriate action on breaches of the code of conduct and it conducted a widespread voter education program.

However, on matters such as voter registration and constituency boundaries the ECK has not shown the proactive attitude that may be expected from such an important and independent standing commission. Furthermore, the ECK issued contradictory statements within a short period of time, and ECK staff received differing instructions. An example of this was the confusing and contradictory instruction on how to deal with voters who did not appear on the voters register but were in possession of a valid ID and voters card. The two main concerns are:

(i) The process of voter registration. Valuable time was lost between the proposal to introduce continuous voter registration and its adoption by parliament. This resulted in its delayed introduction until after the elections. The opportunity was lost to make the voters register as inclusive and as up to date as possible.

(ii) The constituency boundaries. In certain constituencies the number of votes needed to be elected can be up to 17 times the number needed in other constituencies. The ECK could have addressed this issue in the period between the 1997 elections and the preparations for these elections.

The absence of a provision facilitating voting for election officials working in a polling station other than that in which they are registered, also raises concern. Together with a substantial number of Kenyan citizens in the army and the police forces, a number of election officials were thus deprived of the possibility to cast their vote.

Pre-election environment

The level of violence and intimidation was significantly below that predicted and below the level of the 1997 elections. However, there were some serious violent incidents during the period for nominations and in the week before the elections.

The process of nominating candidates for the National Assembly Elections was rather chaotic due to a lack of appropriate internal democratic procedures in the political parties for the election/selection of candidates. The ECK further eroded the idea of due representation by allowing, after the official closure of nominations, duly nominated candidates to withdraw, leaving the Baringo Central seat unopposed to Mr. Gideon Moi, and political parties to replace duly nominated candidates - both in contravention of the law.

There were a substantial number of reported cases of bribery and treating of potential voters, where candidates handed out money and goods.

It is unfortunate that no law provides for financial disclosure by political parties, amongst others with regard to the sources of funding of the parties, particularly in light of serious and frequent allegations made that public resources were used for political campaigning.

Media coverage

Despite shortcomings, the print and the electronic media, both public and private, generally offered extensive and diverse coverage of the political campaign. However, the media system still suffers from interference of state officials into the activities of the public broadcaster KBC, from restrictive legislation and from poor employment conditions of journalists - which may result in self-censorship.

EU EOM monitoring of the media showed that since November 22, the public broadcaster KBC TV and radio gave clear preference to the ruling party KANU and its presidential candidate Uhuru Kenyatta with a 33% of coverage on TV and a further 32% to the presidential duties and campaigning activities of President Daniel arap Moi. Nevertheless, the EU EOM acknowledges that the opposition coalition NARC and its presidential candidate Mwai Kibaki were given a 25% of coverage on KBC TV. In addition, it is worth noting that KBC did not stop broadcasting NARC advertisements, contrary to misleading information released by private media.

The private TV stations KTN, Nation TV and print media provided the voters with a broad variety of political views. KTN devoted to NARC and to Mwai Kibaki 45% of coverage, to KANU, Uhuru Kenyatta and President Daniel arap Moi a total of 38%. Nation TV gave to NARC and to Mwai Kibaki 44% of coverage and to KANU, Uhuru Kenyatta and President Daniel arap Moi a total of 34%.

The ECK guidelines for media coverage of these elections gave clear advice on how to provide voters with adequate information on the elections. However, due to the late release of the guidelines on December 12, the EU EOM is doubtful about their impact.

Polling and counting

The peaceful and patient turn out of voters on Election Day contributed to the organised and orderly poll. Election officials conducted their task in a responsible, efficient and impartial manner and the presence of party agents and domestic and international observers in nearly all polling stations ensured openness and transparency of the process.

Polling was generally conducted in a peaceful atmosphere with only a few reported incidents of violence and intimidation.

However, people's names missing from the voters register and the inconsistent application by presiding officers of ECK instructions on how to deal with these cases, led to confusion and inequitable treatment of a number of voters.

Counting at the polling stations and tabulation of results at the constituency centres was conducted in an orderly and consistent manner. The tabulation of results of the presidential elections in Nairobi appears to be equally well conducted, but it still ongoing at the time of this statement.

The EU EOM will continue to observe the tabulation process at the ECK in Nairobi. Further, the EU EOM will observe the adjudication by the ECK and the courts of any complaints and/or election petitions.

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The EU Election Observation Mission to Kenya is financed by the European Initiative for Democracy and Human Rights (EIDHR) and is part of the overall EU policy to promote the respect for human rights, fundamental freedoms, good governance, and strengthen the rule of law and democratic institutions. In 2002, the EU observed elections in Cambodia, Congo Brazzaville, Sierra Leone, Pakistan, East Timor, Ecuador and Madagascar.