



**AFRICAN UNION ELECTION OBSERVATION MISSION
TO THE 26 OCTOBER 2017 FRESH PRESIDENTIAL ELECTION IN KENYA**

PRELIMINARY STATEMENT

I. INTRODUCTION

1. As part of its long term engagement in the electoral process in Kenya, the African Union (AU) deployed a pre-election assessment mission to the country in June 2017. This was followed by the deployment of long and short term observers to the 8 August 2017 General Elections. In consideration of the context of the 26 October 2017 Fresh Presidential Election, the AU Election Observation Mission (AUEOM) adopted a methodology of long term technical assessment of the process through the deployment of a core team of five thematic experts, deployed from 21 September 2017. The methodology also included an assessment of the polling and results tallying procedures through the deployment of 40 STOs from 19 October to 1 November 2017. In response to part of the Supreme Court Judgement of 1 September 2017, an elections information technology expert was included in the technical support team, to enable the AUEOM to make an informed assessment on the use of technology in the election.
2. The Mission was led by His Excellency, Thabo Mbeki, former President of the Republic of South Africa, who held high-level consultations with national stakeholders and heads of other international Election Observer Missions. These consultations further contributed to the AUEOM's assessment of the process.

II. CONTEXT OF THE FRESH PRESIDENTIAL ELECTION

3. Following the petition by NASA, the Supreme Court on 1 September 2017 annulled the 8 August 2017 Presidential Election and ordered the conduct of Fresh Presidential Election within 60 days. The Court determined that the election had not been conducted in line with the legal framework for the conduct of elections in Kenya. The Court also identified irregularities in the system and procedures for results tallying, transmission and declaration. The Court held that it was unable to “find specific finger prints of individuals who may have played a role in commission of illegalities”.

4. In the lead up to the 26 October 2017 Fresh Presidential Election, there was intense political contestation that contributed to a tense environment and eventual outbreak of violence. Specifically, the Mission notes the contestation around the dates of the election; the irreducible minimum requirements for participation in the elections, issued by the National Super Alliance (NASA); the Election Laws (Amendment) Bill; the calls for anti-IEBC protests; the resignation of IEBC Commissioner Roselyn Akombe; the announced withdrawal of the NASA candidates from the election; the decision of the Courts on inclusion of other presidential candidates on the ballot and the casualties recorded as a result of the anti-IEBC protests in the days before the election.
5. The pre-election period was characterised by legal challenges in which the Judiciary played an important role in the settlement of disputes and interpretation of the law. The Mission notes the decisions of the Judiciary that provided the guidance to the IEBC on issues such as the meaning of a fresh election, the candidates to contest in the fresh election and the role of the IEBC Chairperson in verification of results. The AUEOM however, notes the Chief Justice's concerns about attempts to intimidate the Judiciary.
6. The political context was also characterised by contestations over the range of administrative reforms needed within the IEBC to ensure that the Fresh Presidential Election scheduled for 26 October 2017 was credible and consistent with the laws of Kenya.
7. The AUEOM notes the announcement of the withdrawal by NASA presidential candidate, Raila Odinga and his running mate, Kalonzo Musyoka from the Fresh Presidential Election. This announcement was based on their assertion that the IEBC failed to address their demands for "irreducible minimum" reforms. NASA's call for protests and for their supporters to boycott the polls was also noted. The Mission also notes the efforts made by the IEBC to address NASA's irreducible minimums in its published response.
8. The Mission notes the operational and administrative efforts by the IEBC to prepare for the election within a challenging, frequently changing and unpredictable political and legal environment. This could have impacted the credibility of the Fresh Presidential Election as acknowledged by the Chairperson of the IEBC.

9. The Mission notes with concern the violence that followed the anti-IEBC protests that were organised in the run-up to the elections. The Mission expresses its condolences to those who lost their lives and property in the process and wish the injured speedy recovery.
10. The Mission notes that the police were called upon to intervene in more instances than was the case with the 8 August 2017 elections. Allegations of excessive use of force by the police were brought to the Mission's attention. The Mission met with the Acting Cabinet Secretary for the Interior to communicate these allegations; and to urge him to ensure that the police act in accordance with the laws of Kenya in their dealings with protesters. Excessive use of force should be avoided.
11. The Mission notes with concern the pronouncements of some County Governors affiliated to NASA to the effect that the election would not be conducted in certain Counties. These pronouncements contributed to actions taken by their supporters to prevent the IEBC from organising the election in these Counties, thus preventing other citizens who would have liked to exercise their rights to vote from doing so.

III. POLLING AND RESULTS TALLYING PROCEDURES

12. The AUEOM's Election Day deployment took into account security considerations. It deployed its observers to 20 selected Counties, where the observers visited 195 polling stations spread across 71 constituencies.
13. In its assessment of the polling procedures, the Mission notes that overall, the stipulated procedures for opening, voting, closing and counting were largely complied with. The Mission notes improvements in the technical conduct of the election, for example the availability of hard copies of the voters' register at all stations. Voter turnout was notably lower in the Fresh Presidential Election. The absence of opposition party and other candidates' agents was also noted at all the stations visited. There were observed instances of failure of the BVI devices (KIEMS) to identify voters. In these cases, the *Validation of Identity Forms* were completed as required or the *alpha numeric search* was resorted to. Observers noted that all party agents who were present at the count consented and signed the results before the Form 34A was transmitted electronically to the Constituency Tally Centre and a copy was posted outside the station by the presiding officers. The Mission also noted the negative impact of the poor weather conditions on the polling process.

14. The Mission notes with concern the acts of violence in some parts of the country which prevented the conduct of election in such places. The destruction of property, injuries and loss of lives that were reported during these events is unfortunate and must be condemned. Based on these unfortunate events, the AUEOM notes the decision of the IEBC, acting on the basis of the provisions of Section 55b of the Elections Act, indefinitely to postpone polling in Homa Bay, Kisumu, Migori and Siaya Counties for security reasons. In the end, the IEBC announced that it was impossible to hold elections in those Counties, due to ongoing insecurity.
15. On 27 October, AU observers visited 19 constituency tally centres. In its assessment of the tally process, the Mission notes that the staff complied with the stipulated procedures to a large extent. Similar to our observation at polling stations, the absence of opposition party and candidates' agents at constituency tally centres was noted. The electronic transmission of Forms 34B from these centres was successful. Furthermore, through the visit of its IT expert to the national tally centre, the Mission verified that the transmitted forms 34B from the constituency tally centres visited by AU observers matched with the data at the national tally centre.
16. The AUEOM notes the amended transmission and tally procedures which included the use of scanned images of the forms. The transmission of numbers was discontinued by the IEBC because particulars of other candidates who came late into the process as a result of a court judgement could not be loaded on the KIEMS.
17. The Mission observed the detailed manner in which the results were verified at the national tally centre. Original Forms 34A and Forms 34B were checked one by one, and the verified results were announced thereafter. At the completion of the verification process, the National Returning Officer compiled Form 34C and announced the final official result of the Fresh Presidential Election.

IV. CONCLUSION

18. Following the announcement of the results by the IEBC, the Mission calls upon all parties that feel aggrieved by this election to follow legal processes in challenging any aspect of the electoral process.

19. This statement presents the AUEOM's preliminary findings. It is not a statement on its overall assessment of the Fresh Presidential Election. The AUEOM will continue to observe all electoral developments and provide a final detailed report on a later date.
20. The African Union stands ready to assist the sister people of Kenya as they navigate the post-election period. Kenya is an important country in the region and the Continent. We hope that all Kenyans will express their wishes in a peaceful manner, recognising that they have all worked hard to ensure that it remains a democratic country.

Nairobi, 31 October 2017