

## **GUIDELINES FOR AFRICAN UNION ELECTORAL OBSERVATION AND MONITORING MISSIONS**

### **1. INTRODUCTION**

- 1.1 Electoral observation and monitoring has become an integral part of the democratic and electoral processes in Africa. International, regional and national observers have come to play important roles in enhancing the transparency and credibility of elections and democratic governance in Africa and the acceptance of election results throughout the continent. Electoral observation and monitoring missions can also play key roles in diminishing conflicts before, during and after elections.
- 1.2 The African continent has made significant progress in institutionalising electoral democracy over the course of the past decade. This is reflected in a number of successful multiparty elections in most member states. Notwithstanding these achievements, however, major challenges remain. These include the prevalence of conflict in some countries of the continent, and violence and instability resulting from disputed elections. The major challenge is the need to improve the integrity of electoral processes. One way of improving the integrity of electoral processes is by involving local and international observers and monitors.
- 1.3 The following guidelines are drafted in the spirit of strengthening the democratisation and governance processes underway in Africa. It is furthermore drafted with a view to guiding the involvement of the AU in the observation and monitoring of elections in member states.

### **2. BACKGROUND**

- 2.1 In the OAU declaration on the Principles Governing Democratic Elections in Africa (2002), Heads of State and Government requested the AU to be fully engaged in the strengthening of the democratisation process, particularly by observing and monitoring of elections in Member States, according to strict guidelines.
- 2.2 Conscious of the democratic strides taken by the African Union (AU) in endorsing the Declaration on the Principles Governing Democratic Elections in Africa and The New Partnership for Africa's Development (NEPAD 2001), member states recognised that transparent and credible elections play a crucial role in ensuring the fundamental and universal right to democratic and participatory government.
- 2.3 At the 38th Ordinary Session of the Assembly of the OAU in July 2002, African Heads of State and Government considered the Report of the Secretary General

- on strengthening the role of the OAU in election observation and monitoring and the advancement of the democratization process.
- 2.4 Leaders considered the principles and objectives of the African Union enshrined in the Constitutive Act of the African Union, particularly in its Articles 3 and 4. They further reaffirmed their commitment to the Algiers Decision of July 1999 and the Lomé Declaration of July 2000 on the Framework for an OAU response to unconstitutional changes of government, which laid down a set of common values and principles for democratic governance.
  - 2.5 Consideration was further given to the CSSDCA Solemn Declaration adopted by the Assembly of Heads of State and Government of the OAU in Lomé, Togo, in July 2000, which underpins the OAU's agenda of promoting democracy and democratic institutions in Africa.
  - 2.6 Through NEPAD's Democracy and Political Governance Initiative, African Leaders undertook to promote and protect democracy and human rights in their respective countries and regions, by developing clear standards of accountability and participatory governance at the national and sub-regional levels.
  - 2.7 Reference should also be made to the importance of the Universal Declaration of Human Rights adopted in December 1948, as well as the International Covenant on Civil and Political Rights adopted in December 1966, which recognized the will of the people expressed through free and fair elections as the basis of the authority of government.
  - 2.8 Another landmark African document, the African Charter on Human and Peoples' Rights adopted in Nairobi, Kenya, in June 1981, recognizes the right of every citizen to participate freely in the government of his or her country whether directly or through democratically elected representatives.
  - 2.9 In the Declaration of the Assembly of Heads of State and Government of the OAU on the Political and Socio-economic Situation in Africa and the Fundamental Changes Taking Place in the World, adopted in Addis Ababa, in July 1990, OAU Member States undertook to continue with the democratization of African societies and the consolidation of the democratic institutions.
  - 2.10 The African Charter for Popular Participation in Development adopted in Addis Ababa, Ethiopia, in July 1990, emphasized the need to involve the people of Africa in the spheres of economic and political governance.
  - 2.11 Also, the Cairo Agenda for Action adopted in Cairo, Egypt, in 1995, stress the imperative of ensuring democratic governance through popular participation based on the respect for human rights and dignity, free and fair elections, as well as on the respect of the principles of freedom of the press, speech, association and conscience.

- 2.12 Member States have the sovereign right to choose its political system in accordance with the will of its people and in conformity with the Constitutive Act of the African Union and the universally accepted principles of democracy.
- 2.13 And member states and national electoral commissions should support the ever-growing role already played by the AU in the observation/monitoring of elections and the need to strengthen the Organisation's efforts in advancing democracy in Africa.

### **3. CRITERIA FOR DETERMINING THE NATURE AND SCOPE OF AU ELECTORAL OBSERVATION AND MONITORING**

- 3.1 In performing their obligations, the election observers or monitors shall be guided by detailed guidelines to be prepared by the General Secretariat drawing inspiration from the essential thrust of the OAU Declaration of Principles Governing Democratic Elections ("*the Principles*"). The specific mandates and terms of reference shall be determined by the particular case in question as well as the wider legal framework of the country staging elections.
- 3.2 Formal invitation to the AU is to be made by the country organising the elections, either through the National Electoral Commission (NEC), or electoral authority, or the said government, in accordance with the democratic legal framework of the country, as necessary elements for mounting observations.
- 3.3 The AU, after receiving the invitation to observe an election, must ensure that it has:
- Adequate lead-time for preparations;
  - Availability of essential planning information;
  - Availability of professional expertise; and
  - Financial and other resources
- 3.4 The AU should dispatch an Election Assessment Team to the country planning for an election, soon after receiving the letter of invitation (three to two months) to dispatch an observation or monitoring team, and well in advance of the actual election date. The purpose of the assessment team should be to make an on the spot evaluation of the conditions within which elections will take place.
- 3.5 The decision about dispatching an observer and monitoring mission in a member country holding elections must be informed by a preliminary assessment of the country's social, economic, political and constitutional arrangements.
- 3.6 African states differ in terms of their organizational capacity, financial and human resources, infrastructural development – notably road, telecommunication and technological infrastructure – which have an impact on the way elections are

organised across the continent. These should be taken into account when forming judgements about the nature of elections. These factors could have impacts on the smooth running of elections and the transparency and freeness of elections. But, it is the responsibility of states organizing elections, within the limit of their capacity, to ensure that all necessary measures are taken for provision of adequate logistics and resources (financial and human) for carrying out credible and democratic elections.

3.7 However, the existence of a “level playing field”, which determines the conditions electoral competition, is an important aspect that needs evaluation when determining the likely character of the electoral process. The assessment team will assess whether or not conditions of organizing credible, legitimate, free and fair elections are in place in the country. Some of the issues to consider in the assessment will include:

- i. Does the constitution and legal framework guarantee fundamental freedoms and human rights?
- ii. Is the electoral system premised on the right to freedom of association, and enables people to advance this right through the formation of political parties for the purposes of electoral competition?
- iii. Is the Electoral Commission independent and impartial, and exercise its powers and perform its functions without fear, favour or prejudice?
- iv. Are the rights of observers guaranteed?
- v. Is it likely that the security forces will maintain a neutral role in the provision of election security?
- vi. Is the situation in the country generally peaceful or is there political violence? If so will the government’s security measures provide an environment in which a free election campaign or are there substantial restrictions on the freedom of expression, association and assembly?
- vii. Are there clearly articulated rules for political party funding to be respected by all parties and candidates?
- viii. Is the Voter education that should be provided non-partisan, independent and co-ordinated throughout the country?
- ix. Will there be equitable use or access to public resources for election campaigning?
- x. Is the registration of voters should be done without distinction or discrimination on the basis of gender, race, religion, region or ethnicity?
- xi. Does an Independent Media Authority responsible for monitoring and regulating the media to allow equitable access to the public media of all contesting parties and candidates function?

3.8 The AU Electoral Assessment Team should advise the AU Election Unit on whether or not to undertake an AU mission. In both cases there are a number of options, which the AU could consider.

- 3.9 If the decision is to send an observation or monitoring mission, the assessment team must advise the AU on the nature the mission—observation, technical assistance, monitoring or supervision—that should be undertaken. A combination of some of these options could also be envisaged however the recommended mix of mandate should ensure there is no conflict of interest.
- 3.10 If the decision is not to send an observation or monitoring mission because of the prevailing unsatisfactory conditions in the country, two intermediate responses could be envisaged. First, if the host country is prepared to accept assistance from the AU to remedy the situation, a technical team or supervisory team could be considered to work with the Election Commission. Second, if the unsatisfactory conditions deteriorate, and the host country is not prepared to accept outside assistance, the AU could consider not sending a mission at all.
- 3.11 The AU assessment team will not only assess the conditions prevailing in a particular country at a particular time, but also the direction in which events are developing: different responses may be appropriate to different situations.
- 3.12 There should be prior understanding between the AU and the country organising elections that the AU reserves the right not to send or to withdraw observers in certain circumstances when conditions in the country do not meets the AU guiding principles for organising free and fair elections.

#### **4. MANDATES, RIGHTS AND RESPONSIBILITIES OF AU OBSERVATION AND MONITORING MISSIONS**

- 4.1 After deciding that the necessary conditions exist for genuine elections to take place and that all stakeholders welcome the AU, the AU Electoral Assessment Team must make recommend the size, duration and mandate of the mission to be deployed.
- 4.2 Although the mandate of the electoral mission recommended may vary. The rights accorded observers and monitors should remain the same. The rights enjoyed by observers and monitors alike are listed below.

AU Observers and Monitors have the right to:

- i. Freedom of movement within the host country;
- ii. Accreditation as election observers or monitors on a non-discriminatory basis;
- iii. Communicate freely with all competing political parties, candidates, other political associations and organisations, and civil society organisations;

- iv. Communicate freely with voters except when the electoral law reasonably prescribes such communication in order to protect the secrecy of the vote;
  - v. Unhindered access to and communicate freely with the media;
  - vi. Communicate with and have unimpeded access to the National Election Commission or appropriate electoral authority and all other election administrators;
  - vii. Communicate and seek the collaboration of the Judiciary, the National Assembly or Parliament, security personnel, and all other appropriate Government departments and agencies involved in the election process;
  - viii. Free access to all legislation and regulations governing the electoral process and environment;
  - ix. Free access to all electoral registers or voters' list;
  - x. Unimpeded access to all polling stations and counting centres including those used by the military or other specific groups;
- 4.3 The assessment team first will need to decide the scope or mandate of the electoral mission. These can include:
- i. Observation, which involves gathering information and making an informed judgement;
  - ii. Monitoring, which involves the authority to observe an election process and to intervene in that process if relevant laws or standard procedures are being violated or ignored;
  - iii. Mediation, that is third-party intervention in electoral disputes, directed at assisting disputants to find a mutually acceptable outcomes and solutions to electoral disputes;
  - iv. Technical Assistance, which generally takes the form of technical support and advice to the Electoral Commission;
  - v. Supervision and Audit, which involves the process of certifying the validity of all or some of the steps in election processes either prior to or after the election has taken place; and
- 4.4 The next issue to be considered by the team will be the duration of the mission and/or the frequency of visits envisaged. In general, this will be determined by the timing and duration of:

- i. voter registration/updating of voter registers and periods set aside for the public to check their entry on the register;
  - ii. party and candidate registration,
  - iii. candidate and party nominations,
  - iv. the electoral campaign, and
  - v. the installation in office of the successful candidates.
- 4.5 The mission could be deployed throughout or it could be deployed at specific times to cover specific events which, based on the assessment of the team, are critical to holding credible elections. Furthermore the AU Electoral Assessment Team will need to take account of available financial and human resources as well as the situation on the ground. However the AU is committed to the deployment of long term intercessions rather than relying on the assessment of a small group of observers or monitors who are only deployed a few days prior to election day.
- 4.6 Finally the AU Electoral Assessment Team should make recommendations on the number of personnel required to fulfil the mandate of the mission. It is likely that election observation, monitoring and high profile supervisory or audit missions will be lead by high profile and respected Africans, backed by skilled and competent managers with technical skills. A Head of the AU Election Mission will be designated to represent the AU and to support the activities of all other personnel. The Head of the AU Mission will be responsible for any statement made on the conduct of the election on behalf of the AU. In some circumstances He/she will conduct on-going assessments and management roles throughout the mission, in others a suitably qualified technical Deputy Head will be appointed to supervise the work of the rest of the mission.
- 4.7 If the assessment team recommends that a long-term observation or monitoring mission should be deployed then they should indicate the number of personnel required. In addition to the Head of the AU Mission consideration should be given to what particular aspects of the election require scrutiny. In addition to observing the electoral administration and campaign the assessment team may recommend, for example that specialist personnel be deployed to assess the legal framework and any disputes that might arise, monitoring the media, or evaluation of the electoral registers. These specialists will need to be appointed from an AU pool or roster of suitably qualified personnel from across the continent.
- 4.8 The number of core staff or experts and long term observers or monitors deployed throughout the host country will influence the number of financial, administrative and logistic staff required.

- 4.9 For medium to long-term missions, the AU observation or monitoring team shall be deployed throughout the country. Such a team would be engaged in the process from the pre-election, actual election, and post-election phases. In determining the number of long term observers, monitors or supervisors the Assessment Team will need to take account of a number of factors. These will include:
- i. The number of electoral or administrative units across the country;
  - ii. The infrastructure and geography of the host country;
  - iii. Problematic or “hot spot” areas which are likely to be highly contested, have in the past experienced tension, disputes or violence;
  - iv. The human and financial resources available;
  - v. The deployment of other national or international observers.
- 4.8 There is need for post-election review be held, either through an evaluation by the observation team or an independent consultant agreed upon by the AU. The post-election review must concentrate on performance of the mission (function) and administration of the entire observation mission. The evaluation is conducted in the interest of improving the deployment of future observation missions.

## **5. CODES OF CONDUCT FOR AU ELECTION OBSERVERS AND MONITORS**

- 5.1 The code of conduct for AU Election Observers and Monitors is binding. Breach of the Code will result in the AU taking appropriate disciplinary proceedings including the repatriation of the person.
- i. Must comply with all national laws and regulations;
  - ii. Shall maintain strict impartiality in the conduct of their duties, and shall at no time express any bias or preference in relation to national authorities, parties and candidates in contention in the election process. Furthermore they will not display or wear any partisan symbols, colours or banners;
  - iii. Shall neither accept nor attempt to procure any gifts, favours or inducements from a candidate, their agent, the parties or any other organisation or person involved in the electoral process;
  - iv. Shall immediately disclose to the AU any relationship that could lead to a conflict of interest with their duties or with the process of the observation and assessment of the elections;



- v. Will base all reports and conclusions on well documented, factual, and verifiable evidence from multiple number of credible sources as well as their own eye witness accounts;
  - vi. Shall seek a response from the person or organisation concerned before treating any unsubstantiated allegation as valid;
  - vii. Shall identify in their reports the exact information and the sources of the information they have gathered and used as a basis for their assessment of the electoral process or environment;
  - viii. Shall report all information gathered or witnessed by them honestly and accurately;
  - ix. Shall, when meeting election officials, relevant state authorities and public officials, parties, candidates and their agents shall inform them of the aims and objectives of the AU Electoral Mission;
  - x. May wish to bring irregularities to the attention of the local election officials, but they must never give instructions or countermand decisions of the election officials;
  - xi. Will carry any prescribed identification issued at all times, and will identify themselves to any interested authority upon request;
  - xii. Will undertake their duties in an unobtrusive manner, and will not interfere with the election process, polling day procedures, or the vote count;
  - xiii. Will refrain from making personal or premature comments or judgements about their observations to the media or any other interested persons, and will limit any remarks to general information about the nature of their activity as observers;
  - xiv. Must participate in the briefings/training provided by the AU Electoral Mission;
  - xv. Must provide their reports on time to their supervisors and attend any debriefings as required.
  - xvi. Should work harmoniously with each other and with observers from other organisations in their area of deployment.
- 5.2 The code of conduct for monitors will have one significant alteration in that article (x) shall read:
- x. Shall bring irregularities to the attention of the election authorities and may, in specific circumstances countermand the instructions of election officials if they are in breach of the electoral law or regulations;

## **6. PRINCIPLES GOVERNING DEMOCRATIC ELECTIONS IN AFRICA**

- 6.1 Principles are important in guiding observers and monitors in coming to final assessments of the election processes and environments. The “*principles*” are divided between the responsibilities of member states and the rights and obligations under which democratic elections must be held.
- 6.2 The Declaration of OAU Principles Governing Democratic Elections in Africa was adopted by the Heads of State and Governments at the 38<sup>th</sup> Ordinary Session of the Organization of African Unity on 8<sup>th</sup> July 2002 in Durban, South Africa, state the principles that should guide observers and monitors. The principles state that:
- i. Democratic elections are the basis of the authority of any representative government;
  - ii. Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development;
  - iii. The holding of democratic elections is an important dimension in conflict prevention, management and resolution;
  - iv. Democratic elections should be conducted:
    - a) freely and fairly;
    - b) under democratic constitutions and in compliance with supportive legal instruments;
    - c) under a system of separation of powers that ensures in particular, the independence of the judiciary;
    - d) at regular intervals, as provided for in National Constitutions;
    - e) by impartial, all-inclusive competent accountable electoral institutions staffed by well-trained personnel and equipped with adequate logistics;

The principles also spell out Responsibilities of Member States. Under the responsibilities, member states commit their Governments to:

- i. take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of our respective countries;
- ii. establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers, etc would be addressed;

- iii. establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections;
- iv. safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes;
- v. promote civic and voters' education on the democratic principles and values in close cooperation with the civil society groups and other relevant stakeholders;
- vi. take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices throughout the whole electoral process, in order to maintain peace and security,;
- vii. ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organise their work, including participation in electoral process.;
- viii. ensure that adequate security is provided to all parties participating in elections;
- ix. ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/or other observers/monitors;
- x. encourage the participation of African women in all aspects of the electoral process in accordance with the national laws.

Member states also committed themselves to certain rights and obligations under which democratic elections are conducted:

- i. Every citizen shall have the right to participate freely in the government of his or her country, either directly or through freely elected representatives in accordance with the
- ii. provisions of the law.
- iii. Every citizen has the right to fully participate in the electoral processes of the country, including the right to vote or be voted for, according to the laws of the country and as
- iv. guaranteed by the Constitution, without any kind of discrimination.
- v. Every citizen shall have the right to free association and assembly in accordance with the law.

- vi. Every citizen shall have the freedom to establish or to be a member of a political party or Organization in accordance with the law.
- vii. Individuals or political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land.
- viii. Individual or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.
- ix. Candidates or political parties shall have the right to be represented at polling and counting stations by duly designated agents or representatives.
- x. No individual or political party shall engage in any act that may lead to violence or deprive others of their constitutional rights and freedoms. Hence all stakeholders should refrain from, among others, using abusive language and/or incitement to hate or defamatory allegations and provocative language. These acts should be sanctioned by designated electoral authorities.
- xi. All stakeholders in electoral contests shall publicly renounce the practice of granting favours, to the voting public for the purpose of influencing the outcome of elections.
- xii. In covering the electoral process, the media should maintain impartiality and refrain from broadcasting and publishing abusive language, incitement to hate, and other forms of provocative language that may lead to violence.
- xiii. Every candidate and political party shall respect the impartiality of the public media by undertaking to refrain from any act which might constrain or limit their electoral
- xiv. adversaries from using the facilities and resources of the public media to air their campaign messages.
- xv. Every individual and political party participating in elections shall recognize the authority of the Electoral Commission or any statutory body empowered to oversee the electoral process and accordingly render full cooperation to such a Commission/Body in order to facilitate their duties.
- xvi. Every citizen and political party shall accept the results of elections proclaimed to have been free and fair by the competent national bodies as provided for in the Constitution and the electoral laws and accordingly respect the final decision of the competent Electoral Authorities or, challenge the result appropriately according to the law.