



**AFRICAN UNION ELECTION OBSERVER MISSION TO THE
4 MARCH 2013 GENERAL ELECTIONS IN
KENYA**

PRELIMINARY STATEMENT

A. INTRODUCTION

1. At the invitation of the Government of the Republic of Kenya and the Independent Electoral and Boundaries Commission (IEBC), the Chairperson of the African Union Commission, H.E. Dr. Nkosazana Dlamini Zuma, deployed an African Union Election Observer Mission to the 4 March 2013 General Elections of the Republic of Kenya.
2. Led by H.E. Joaquim Chissano, former President of the Republic of Mozambique, the Mission comprised of 60 observers drawn from the Pan-African Parliament, African Ambassadors to the African Union Commission in Addis Ababa, Election Management Bodies and African Civil Society Organisations from the following countries: Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroun, Cape Verde, Ethiopia, Gabon, Ghana, Lesotho, Liberia, Malawi, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, Saharawi Republic, Sierra Leone, South African , South Sudan, Sudan, Swaziland, Tanzania, The Gambia, Tunisia, Uganda and Zambia
3. Supported by a team of experts from the African Union Commission, the Pan-African Parliament and the Electoral Institute for Sustainable Democracy in Africa (EISA), the African Union Mission for the first time operated in two streams of Long Term Observers (LTO) and Short Term Observers (STO). Long Term Observers arrived in Kenya on 12 January 2013 and will remain in the country until 15 March 2013, while the Short Term Observers, who arrived in Kenya on 24 February 2013, operate until 9 March 2013.
4. The African Union Mission hereby presents its preliminary observations of Kenya's electoral process from its first deployment on January 12 to the end of polling in the 4 March 2013 general elections. Cognisant of the fact that the aggregation of results is ongoing and the results of the general elections are yet to be officially declared, the Mission will submit a more detailed final report at the end of the electoral process.

B. OBJECTIVE AND METHODOLOGY OF THE MISSION

5. The objective of the AU Mission is to make an independent, objective and impartial assessment of the 4 March 2013 General Elections in Kenya. In pursuance of this objective, the African Union Mission observed the elections within the spirit and letter of the Durban Declaration on the Principles Governing Democratic Elections in Africa (AHG/Decl.1 (XXXVIII), as adopted by the Assembly of Heads of State and Government of the African Union in July 2002; the African Charter on Democracy, Elections and Governance, which came into force on 15 February 2012; the Guidelines of the African Union Election Observation Missions and Election Monitoring, as well as the legal framework for the conduct of elections in the Republic of Kenya.
6. In accordance with these instruments the Mission undertook the following activities. A team of 5 Long Term Observers is operating in the country for 7 weeks and deployed to Nairobi, Kitui, Machakos, Nakuru, Kisumu, Mombasa, Kwale Nyeri, Murang'a, Kiambu, Meru, Naivasha, Uasin, Gishu, and Kakamega Counties. The team consulted with a wide range of stakeholders, from the IEBC, Political Parties, Law Enforcement agencies, KNHRC, the Domestic Elections observation group (ELOG), Media Council and the Eminent Persons of Kenya to Integrity International, NCIC, EISA, Human Rights Watch, EU Observer Mission, the African Union Panel of Eminent Persons, and the United Nations office in Nairobi.
7. The AU's Long Term Observers also consulted the African Union (AU) Panel of the Wise, the Common Market for Eastern and Southern Africa (COMESA) Committee of Elders, and the Intergovernmental Authority on Development (IGAD). It monitored the campaigns of the political parties and other pre-election activities including the historic presidential debates in which key public policy and governance issues were openly discussed. The deployment of Long Term Observers enabled the African Union to receive firsthand information on the context and dynamics of the pre-election period.
8. On February 25, the Short Term Observers joined the Long Term Observers in a two-day briefing and orientation session at which the entire Mission was briefed by representatives of the Independent Electoral and Boundaries Commission (IEBC), the Kenyan Police, the UNDP, Judiciary Working Committee on Election Preparations, ELOG (Local Election Observer Group), academia and other Civil Society Groups.
9. The leadership of the AU Mission also consulted with key electoral stakeholders, including top representatives of the government of Kenya, presidential candidates, representative of the Panel of African Eminent Persons, the Diplomatic Corps, International development partners, Kenyan Eminent Persons, Independent Electoral and Boundaries Commission (IEBC), Civil Society Groups and Heads of International Observer Missions in Kenya.
10. Twenty-nine (29) teams of the AU Mission observed the final days of the campaigns and preparations towards the March 4 general elections in twenty-eight (28) out of the 47 Counties of Kenya. These were Bungoma, Embu, Homa

Bay, Kaijado, Kakmega, Kericho, Kiambu, Kilifi, Kisii, Kisumu, Kltui, Kwale, Machakos, Makueni, Meru, Mombasa, Murang'a, Nairobi, Nakuru, Narok, Nandi, Nyeri, Siaya, Trans Nzoia, Uasin-Gishu and Tharaka Nitti. On Election Day the teams visited a total of 482 polling stations covering 130 constituencies in their areas of deployment.

11. The findings of the above mentioned activities have informed the preliminary statement of the AU Elections Observation Mission to Kenya which is presented as follows:

C. PRE-ELECTIONS OBSERVATIONS

The Legal Framework:

12. Kenya's new Constitution (2010) and the passage of several enabling legislations such as the Political Parties Act (2011), the Elections Act (2011), the Independent Electoral and Boundaries Commission (IEBC) Act (2011), the National Cohesion and Integration Commission Act (2008), the Leadership and Integrity Act (2012), together with the establishment of a host of corresponding institutions have improved the general framework for electoral governance and introduced changes in the in the Kenyan electoral landscape. The constitutional and legal reforms undertaken in the aftermath of the 2007 elections have not only provided an institutionalised and orderly framework within which political and human rights are protected and fair political competition promoted but also created a better enabling framework for conducting peaceful and credible multiparty elections such as the March 4 general elections. Although this more conducive and open framework enables the participation of citizens and political parties in the electoral process, the Mission also notes the fact that the 2013 elections were conducted without a clear framework for the regulation of party and campaign financing.

Election Management:

13. The Independent Electoral and Boundaries Commission (IEBC) is the primary institution mandated to conduct and supervise elections and referenda. Article 254 of the Constitution guarantees the independence of the Commission and precludes it from the control of any person or authority. The current Commission is the successor of the Interim Independent Electoral Commission (IIEC) that was establish after the 2007 elections. The Commission is composed of a Chairperson and eight members who were appointed on 8 November 2011 for a non renewable period of six years by an Independent Committee that was set up after the referendum. The Mission observed that the leadership and staff of the IEBC are committed to discharging their functions professionally and impartially and engaging the public in a more open, transparent and accountable manner that appears to be boosting public confidence in the ability of the IEBC to effectively deliver on its mandate. It has consequently carried a number of reforms including:

Biometric Registration:

14. Kenya adopted biometric voter registration for the first time in the bid to enhance the integrity of the voters' roll. A voters' registration exercise was conducted in December 2013 for a period of 30 days and a total of 14,337,399 voters were registered at the end of the process. The Commission also conducted a verification process in January 2013 during which a provisional list was displayed at the registration centres and voters had an opportunity to verify their details. Registrants also had an option of verifying their details to using a short message service (SMS) specially set up for the verification process. The Mission notes that the process was transparent and user friendly.

Biometric Verification:

15. The Mission also notes the steps taken by the Commission to detect and prevent multiple registration and other fraudulent activities. Specifically the establishment of a biometric voter registers, the electronic polling books and the backup verification mechanism – the manual voters register. Whilst the Constitution provides the right for the Diaspora to vote, the IEBC only registered voters in the 5 EAC countries, due to logistical constraints.

Civic and Voter Education:

16. Voter education was conducted by the IEBC in collaboration with civil society groups. It is noted that the voter education started late and took place effectively for a limited period of time (When?). It was also noted that the exposure of voters in the rural areas to these voter education was not as effective as the exposure of voters in the urban areas.

Political Parties, Candidate Nomination and Campaigns:

17. Political parties had to conclude their primary elections and nominations of candidate processes by the 18th January 2013 across the country. Most parties scheduled their nominations to the 17th January 2013 in order to stem the tide of possible defections by those who might lose in party primaries. This caused some problems in the nomination process. A key challenge considering the internal nominations processes concerned the late opening of internal polling centres. Parties opted for secret ballot voting, and often could not begin the process in time. Routine practical, logistical and administrative challenges in conducting internal elections on the brink of the close of the candidate nominations process in this instance, took on a political importance more significant than is in fact the reality with losing candidates complaining that this may have been designed as a deliberate tactic of exclusion. Such incidences have a high propensity to precipitate conflicts within political parties, which can lead to generalised social instability.

The Campaign Process:

18. The 2013 elections campaign process was regulated by the Code of Conduct for Political Parties and the campaigns effectively started after the nomination processes. Overall, the Mission noted that the campaigns were generally peaceful and the media provide opportunity for many candidates for all electoral posts to debate and defend their policies to the public. The two televised Presidential debates were not only historic but also enabled the candidates to openly contentious issues in the public domain such as land ownership, tribalism, corruption, governance, the economy and liveable incomes, as well as and the ICC case. The AU Mission commends the political parties and candidates for the peaceful conduct of the 2013 general elections campaign.

Representation of Women and Minorities:

19. The Mission notes with satisfaction that the provision of special quota for the representation of women and minorities in governance institutions under the 2010 Constitution is in line with article 29 of the African Charter on Democracy, Elections and Governance. The AU Mission, however, notes that this positive decision has not immediately increased the number of female contestants in the 2013 general elections and may well not lead to a significant improvement in women's representation in the next Parliament and allied governance institutions after the elections.

Media:

20. The AU Mission notes that Kenya has a diverse and pluralistic media landscape comprising several Television stations, FM radio stations, newspapers and online publications. The media provided extensive coverage of the activities of the IEBC and the electoral process in general. In the lead up to the election, almost all media houses signed the Code of Conduct on Elections Coverage at the behest of the Media Council of Kenya (MCK). The media largely upheld the Code of Conduct and were in the main either positive or neutral in their coverage of both the electoral process and the polling day itself. Further, the media also made a conscious effort to avoid providing a platform for hate speech and other forms of communication that could lead to public incitement. While the Mission commends the Kenyan Media for its generally positive and constructive coverage of the activities and processes of the March 4, 2013, general elections, it observes that media coverage was more skewed in favor of the two dominant political party coalitions, i.e. CORD and Jubilee, with rather low coverage for the smaller parties, female and independent candidates.

Election Security:

21. Following the conclusion of the Kenya National Dialogue and Reconciliation (KNDR) mediation process in early 2008 which marked the end of post-election violence, the people of Kenya embarked on a course of national reconciliation and healing by adopting the "National Accord and Reconciliation Agreement" with the goal of securing sustainable peace, stability and justice through the rule of law and respect for human rights. To this end, several reform measures were put in place, particularly aimed at addressing and preventing the general situation of insecurity such as pre-election violence; Election Day and post-election violence; inter-communal and resource-based conflicts; and conflicts arising from fierce contestation for political power.

22. The appointment of a new Inspector General of Police with the pledge and support to undertake fundamental reforms aimed at objective and professional service delivery is turning around public confidence positively for the police. It is worthy of note that there have been several activities geared towards coordination of effective election security arrangements between the IEBC and law enforcement officers so as to ensure free, fair and peaceful elections on 4 March 2013.
23. The general police forces and the Special Police for Elections will need to increase their presence to protect the prevailing peace. The African Union Mission appreciates that fact that the Special Police for Elections will be deployed throughout the country to police the elections. The provision of training for member of the Special Police for Elections under the National Training for Election Security Arrangement Project and the provision of special security for all the presidential candidates are also commendable. While the election security arrangement currently in place is commendable continued existence and operations of militia groups and other criminal gangs as Election Day fast approaches constitute a worrying phenomenon.

D. ELECTION DAY OBSERVATIONS

Opening the poll:

24. African Union observers noted that generally officials of the IEBC and the Security agencies reported for duty in time, the opening procedures for voting were delayed in some polling stations due to various problems. These included electricity power failure and poor lighting at polling stations, malfunctioning of the biometric equipment computers and scanners, and difficulties with identification of the correct voting streams within large polling centres, where information to voters were not clearly communicated or posted. There were also security concerns. Despite these challenges, most of the polling stations visited by AU observers opened between 6 a.m and 6:30 am. An exception to the rule was observed in Kitui County where some polling stations opened about two hours late. The African Union Mission is of the view that the delays experienced at the beginning of the process were effectively addressed in most centres by the officials of the Independent Electoral and Boundaries Commission (IEBC), leading to the recovery of time lost.

Polling stations and election materials:

25. Generally, polling stations were established in public buildings such as schools that served as registration centres during the voter registration. It was therefore easy for voters to identify their polling centres. In some polling centres it was noted that the alphabetical demarcation of voting streams was difficult to understand and this contributed to the delays experienced in the voting process. Furthermore, there were some streams that had over 1000 voters which is a very high number of voters per station.

26. The Mission also notes with concern the use of cramped spaces as polling stations which created access for voters in rural areas who had to walk long distances. Each voter was presented 6 ballots for the respective elections which was colour coded to match the colour of the ballot box provided for each election. Apart from 5 counties where the County Assembly ballot was printed with a mix-up of candidate names and photos, the Mission noted that the ballot was presented in a user-friendly manner with the names, party symbols and photos of the candidates.
27. In most of the stations visited, electoral materials were available in sufficient quantities throughout the day. The Mission therefore commends the Commission and security officials for the efficient distribution of materials across the country despite the difficult terrain. The Mission also notes the steps taken to manage the voter register, specifically with regard to the challenges experienced in the biometric verification of voter identity.

Voter turnout:

28. The African Union Mission commends Kenyans for the enthusiasm displayed very early on Election Day, specifically, it was observed that people went out with whistles and vuvuzelas to wake voters up and escort them to the polling stations. The Mission therefore commends Kenyans for these community initiatives taken to get voters out to the polling stations on time. The Mission also notes with satisfaction that in most of the stations visited, the turnout of voters was high.

Voting procedures:

29. Voting procedures were generally conducted in a peaceful and order manner in most of the stations visited. It was however observed that some voters experienced challenges in handling six ballots simultaneously. The Mission also noted that some voters had difficulty in differentiating the colours of the boxes allocated for the respective ballots. Specifically, it was noted that in the rural areas, there was a very high number of voters requiring assistance which could be indicative of the lower level of exposure to civic education in these areas.

Election personnel:

30. All polling stations visited by African Union Observers were adequately staffed. It was also noted with satisfaction that the staff displayed a high level of familiarity and conversance with the stipulated procedures. However, observers noted that the staff were in some cases overwhelmed by the long working hours and the number of voters they had to attend to.

Women's and minority groups' participation on Election Day:

31. The Mission notes with satisfaction the recruitment of female election officials, as it was observed that each station had a significant number of female polling officials. The presence of female security officials, observers and party agents was also observed. With regard to the participation of persons with

disability, the Mission notes that some polling station were inaccessible to this group of voters.

Party agents and independent observers:

32. The Mission noted with satisfaction the presence of national observers from the ELOG group in most of the stations visited. The presence of party agents was also noted in all the stations visited. The Mission therefore commends the level of transparency and participation in the process by civil society and parties. The Mission also noted with satisfaction the good team spirit displayed by polling staff and party agents as they worked harmoniously without significant disruptions in the process.

Security:

33. The Mission notes that the election was conducted in a generally peaceful and organised environment apart from the isolated cases of violence in Mombasa and Kilifi. The presence of security officials was noted in all the stations visited by the African Union observers. The Mission therefore commends the Kenyan Police for effective security coverage of the process. Overall, the Mission is of the view that the presence of security personnel in most cases was unobtrusive and not intimidating. Although there were some cases especially in Kericho and Meru Counties where armed security officials were present inside the polling stations and they were involved in the counting process, this presented a source of concern. The Mission notes with concern the fatal attacks that occurred in Mombasa and Kilifi which led to the deaths of civilians and police officers. It also notes the accidental shooting of a Presiding Officer in Murang'a County. The Mission wishes to express its condolences to the families of the deceased officers who laid down their lives for the cause of democracy and peace in the country.

Closing and counting procedures:

34. The mission noted with satisfaction the extra efforts made by the polling officials to complete the process of voting in one day despite the long queues in most polling stations at 17:00. The Mission however noted the cumbersome procedures and the length of time required to complete the counting of the six ballots which went late into the night and was conducted with poor lighting. The Mission also noted that the poor lighting in some polling stations further complicated the process of verification of valid and invalid ballots. There were also challenges experienced with the late provision of telephones to Presiding Officers and the technical hitches that contributed to the delays experienced in the counting process. The Mission also notes with concern the high number of rejected ballot at the polling stations. The number of rejected ballot was further complicated by the fact that ballots found in the wrong box were rejected.

E. GENERAL OBSERVATIONS:

35. The Mission commends the people of Kenya for the enthusiasm with which they turned out in their numbers to even in the early hours of the morning before the polling stations opened.
36. The Mission further calls on Kenyans to maintain the peaceful atmosphere of the elections even as they await the announcement of results. So far the comportment of all Kenyans – candidates, party activists and sympathisers and the general public has been exemplary. The African Union Mission calls on all stakeholders to continue to do so, by cooperate fully with the IEBC to enable it peacefully discharge its mandate professionally and impartially.
37. While the Mission notes the challenges involved in the conduct of the crucial 2013 elections in the aftermath of the 2007 experience, it commends the Independent Electoral and Boundaries Commission (IEBC) and the other relevant agencies such as the Security Agencies, Political Parties, National Cohesion and Integration Commission, Registrar of the Political Parties and Judiciary for the successful conduct of the elections.
38. Based on its observations and assessment, the African Union Observer Mission concludes that the 4 March 2013 General Elections in the Republic of Kenya were conducted in a peaceful transparent and credible manner that accorded the people of Kenya the opportunity to express themselves freely at the polls.