

AFRICAN UNION COMMISSION



REPORT OF AFRICAN UNION ELECTIONS OBSERVATION MISSION TO THE 4 MARCH 2013 GENERAL ELECTIONS IN KENYA

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List of Abbreviations

AU:	African Union
AUC:	African Union Commission
AUEOM:	African Union Election Observation Mission
COMESA:	Common Market for Eastern and Southern Africa
ELOG:	Election Observation Group
EISA:	Electoral Institute for Sustainable Democracy in Africa
ELOG:	Election Observation Group
FORD:	Forum for the Restoration of Democracy
IGAD:	Intergovernmental Authority on Development
IEBC:	Independent Electoral and Boundaries Commission Kenya
IIEC:	Interim Independent Electoral Commission
KNDR:	Kenya National Dialogue and Reconciliation
KANU:	Kenya African National Union
KHRC:	Kenya National Human Rights Commission
LTOs:	Long Term Observers
MCK:	Media Council of Kenya
NARC:	National Rainbow Coalition
NARA:	National Accord and Reconciliation Agreement
NCIC:	National Cohesion and Integration Commission
NTESAP:	National Training for Election Security Arrangement Project
ODM:	Orange Democratic Movement
PAP:	Pan African Parliament
PoW:	Panel of the Wise
PNU:	Party of National Unity
SPFE:	Special Police for Elections

I. INTRODUCTION

1. In response to the invitation by the Government of the Republic of Kenya and the Independent Electoral and Boundaries Commission (IEBC), the Chairperson of the African Union Commission (AUC), H.E. Dr. Nkosazana Dlamini Zuma, deployed an African Union Elections Observation Mission (AUEOM) to the 4 March 2013 General Elections of the Republic of Kenya from 24 February to 9 March 2013.
2. The AUEOM was led by H.E. Joaquim Chissano, former President of the Republic of Mozambique as Head of Mission and Dr. Aisha Abdullahi, the African Union Commissioner for Political Affairs as the Deputy Head of Mission. The Mission comprised 69 observers (including long term observers) drawn from the Pan-African Parliament (PAP), members of the Permanent Representative Committee (PRC) in Addis Ababa, Election Management Bodies (EMBs) and African Civil Society Organisations from the following 29 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 Africa, South Sudan, Sudan, Swaziland, Tanzania, The Gambia, Tunisia, Uganda and Zambia.
3. The AUEOM was supported by a team of experts from the AUC, the PAP and the Electoral Institute for Sustainable Democracy in Africa (EISA).
4. H.E. Dr. Nkosazana Dlamini Zuma, Chairperson of the AUC during her working visit to the Republic of Kenya, joined the AUEOM from 1 – 3 March 2013. During her visit, she consulted with the President Kenya, presidential candidates, the Diplomatic Corps, Civil Society Groups, the Women Situation Room and interacted with the Media. She concluded her visit with a guided tour of the Kenya National Elections Tallying Centre at the BOMAS of Kenya.

II. OBJECTIVE AND METHODOLOGY OF THE MISSION

Objective

5. The objective of the AUEOM was to make an independent, objective and impartial assessment of the 4 March 2013 General Elections in Kenya. In pursuance of this objective, the AUEOM 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 African Union Guidelines for Elections Observation and Monitoring as well as the legal framework for the conduct of elections in the Kenya.

Methodology

6. The AUEOM for the first time adopted a long term observation methodology. In this regard, a team of five Long Term Observers (LTOs) arrived in Kenya on 12 January 2013 and remained in the country until 15 March 2013. The LTOs provided regular updates on

the pre-election context which served as the basis for the African Union's assessment of the pre-election phase in a statement that was released on 26 February 2012, and were joined by 69 Short Term Observers (STOs) from 24 February to 9 March 2013.

7. To achieve its objectives in accordance with the above-mentioned instruments, the Mission undertook the following activities:
 - a. The deployment of Long Term Observers 7 weeks prior to the arrival of the Short Term Observers enabled the African Union to collect primary data on pre-election context. During this period, the Long Term Observers were deployed to Nairobi, Kitui, Machakos, Nakuru, Kisumu, Mombasa, Kwale, Nyeri, Murang'a, Kiambu, Meru, Naivasha, Uasin Gishu and Kakamega Counties where they consulted with a wide range of stakeholders including the IEBC, Political Parties, Law Enforcement agencies, Kenya National Human Rights Commission (KHRC), Integrity International, National Cohesion and Integration Commission (NCIC), Media Council of Kenya, the Election Observation Group (ELOG), Human Rights Watch, European Union Observation Mission, the African Union Panel of Eminent Personalities, the United Nations Office in Nairobi and the Eminent Persons of Kenya. The LTOs also followed the campaigns and other pre-election events and activities.
 - b. As part of its pre-election assessment, the African Union (AU) Panel of the Wise (PoW) and the Common Market for Eastern and Southern Africa (COMESA) Committee of Elders, in collaboration with the Intergovernmental Authority on Development (IGAD) undertook a joint pre-election assessment mission to Kenya, from January 16 – 23, 2013. During the period, they met with several key stakeholders including some Presidential candidates, IEBC, the Chief Justice, Inspector-General of Police, Civil Society Organisations, including ELOG, private sector, faith based organisations, local and international non-governmental organisations and some national and regional media organisations. They also met with UN Agencies (the Director General of the United Nations Office in Nairobi, and Representatives of United Nations Development Programme, UN Women, United Nations International Children's Education Fund (UNICEF), United Nations High Commissioner for Refugees (UNHCR), and Office of the Coordination of Humanitarian Affairs), the Diplomatic Corps. The group also made a field trip to Nakuru in the Rift Valley Province, one of the provinces that were affected by the 2007-08 post-elections violence.
 - c. On February 25, the STOs joined the LTOs in a two-day briefing and orientation session at which the entire Mission was briefed by representatives of the IEBC, the Kenyan Police, the UNDP, Judiciary Working Committee on

Election Preparations, ELOG, the Local Election Observation Group, academia and other CSOs.

- d. The leadership of the AUEOM also consulted with key electoral stakeholders, including top representatives of the government of Kenya, presidential candidates, representative of the African Union Panel of Eminent Personalities, the Diplomatic Corps, International development partners, Kenyan Eminent Persons, IEBC, the Inspector General of Police, Ecumenical Council, Muslim Communities of Kenya, the Truth Justice and Reconciliation Commission, the Kenyan Human Rights Commission, National Cohesion and Integration Commission, Presidential Candidates, Political Parties Dispute Tribunal, Civil Society Groups and Heads of International Election Observation Missions in Kenya.
 - e. The African Union Mission also took the lead in coordinating the activities of international observer groups that were present in Kenya. In this regard, the Mission convened a pre and post-election joint meeting of all heads of International Election Observation Missions in Kenya including the EU, Carter Centre and Common Weather Observer Group.
8. The AUEOM were deployed in twenty-six (26) of the forty-seven (47) Counties of Kenya to observe the final days of the campaigns and preparations towards the 4 March 2013 General Elections. These were Bungoma, Embu, Homa Bay, Kaijado, Kakamega, Kericho, Kiambu, Kilifi, Kisii, Kisumu, Kitui, Kwale, Machakos, Makueni, Meru, Mombasa, Murang'a, Nairobi, Nakuru, Narok, Nandi, Nyeri, Siaya, Trans Nzoia, Uasin-Gishu and Tharaka Nithi. On Election Day the teams visited a total of 482 polling stations covering 130 constituencies in their areas of deployment.
 9. Based on its observations and consultations, the AUEOM to the 4 March 2013 General Elections in Kenya presents this final report covering pre-election and Election Day observations.

III. BACKGROUND TO THE 4 MARCH 2013 ELECTIONS

10. Kenya became independent country on 12 December 1963 but remained part of the British commonwealth of nations and the Queen of the United Kingdom served as the Head of State. The country subsequently became a republic in 1964 under a constitution in which power was concentrated in the Executive, the Presidency in particular. The Kenya African National Union's (KANU) led Kenya into independence and its leader, Jomo Kenyatta served as its first President while Jaramogi Oginga Odinga served as Vice-President.
11. In 1966, as a result of political differences Vice-President Odinga left the Government and KANU to form the opposition Kenya People's Union (KPU). As part of the attempt by the ruling party, KANU, to monopolize the political space, the government banned the

KPU in 1969. Consequently, KANU became Kenya's only political party with President Kenyatta remaining Head of State until his death in 1978. President Kenyatta was succeeded by then Vice-President Daniel Arap Moi who by 1983 had the Constitution amended to declare Kenya a De- Jure one-party state. This sparked the movement for a "second liberation". In response to an attempted coup d'état against President Moi in 1982, a further erosion of democratic rights was instituted. Demands for liberation found expression in the formation of the Forum for the Restoration of Democracy (FORD) with Oginga Odinga as one of its principal founders. FORD later split into two factions, along ethnic lines.

Review of multiparty elections in the period 1991-2002 and 2002-2007

12. After almost three decades of one-party political system in Kenya, the country returned to constitutional rule after intense pressure from home and abroad, on the ruling KANU in December 1991. Hence KANU accepted demands for the adoption of multiparty rule. This paved the way for multiparty elections in December 1992. The 1992 Presidential elections were contested by 9 political Parties and Alliances. In the election, President Moi was re-elected to a five-year term on the ticket of KANU. KANU also won 100 of seats of the 200-member national assembly.
13. The second election after the return to multiparty political system was held in December 1997 and was contested by 15 political Parties and Alliances. Once again President Moi won a second five-year term to the presidency, and maintained its majority in Parliament by winning 103 of the 210 member national assembly.
14. At the end of his second term in 2002, President Moi chose Uhuru Kenyatta, son of President Kenyatta, as his preferred successor in KANU and the Presidency. The main opposition parties, however, united under the National Rainbow Coalition (NARC) whose candidate, Mwai Kibaki, backed by a fellow former Presidential aspirant from the 1997 election contest, Raila Odinga, defeated Uhuru Kenyatta and KANU leading to the end of KANU's thirty-nine years in power.

Post-Elections Violence and Grand Coalition Government Dec 2007 – March 2008

15. The December 2007 was fiercely contested by 12 political Parties and Coalitions. Prior to the 2007 Election, in 2005, internal conflicts caused the NARC coalition to splinter and a group from NARC teamed up with KANU to successfully campaign against unpopular government-backed proposals for changes to the Constitution which Kibaki had promised. Contrary to positive changes in the Constitution devolving some powers away from the Executive and the Presidency, Kibaki's proposals sought to retain these powers. Leading a campaign against the Constitution through what became known as the Orange Democratic Movement (ODM) which has itself since split. Raila Odinga contested the 2007 elections in which both he and the incumbent, President Kibaki under the Party of National Unity (PNU) claimed victory.

16. Dispute over the 2007 election results sparked widespread post-electoral violence in which over 1000 people were reported dead and several thousand displaced. The post-election violence and the ensuing political disagreement were resolved through a combination of international and local initiative under the auspices of the African Union Panel of Eminent African Personalities led by the former UN Secretary General, Kofi Anan. The product of negotiation, the National Reconciliation Accord brought about a power sharing deal through a grand-coalition government.
17. One of the main terms of reference of the Grand Coalition Government was to work toward political, social and institutions reforms that would contribute to national reconciliation and provide the appropriate framework for future elections. In line with this, Kenya made efforts to establish the necessary political and legal context within which the 4 March 2013 elections are expected to take place. The election was therefore guided by the 2010 Constitution of Kenya, the Electoral Act 2011, the Electoral Code of Conduct; the Political Parties Act 2011, among others.

IV. PRELIMINARY FINDINGS AND OBSERVATIONS

The Legal Framework

The 2010 Constitution

18. The AUEOM noted that the 2010 Constitution of Kenya recognises and guarantees the fundamental rights and freedoms of Kenyans. It sets out principles for the conduct of elections, including the holding of periodic regular elections; secrecy of the ballot; universal adult suffrage; establishment of an independent electoral body; and conduct of elections in a transparent, impartial, neutral, efficient, accurate and accountable manner.
19. The Mission also noted with satisfaction the changes in the Kenyan electoral landscape brought about by the new Constitution. Key amongst these changes are:
- a) The constitutional provision of Presidential running-mate as pre-requisite for Presidential candidature;
 - b) The establishment of a two chamber Parliament comprising of the National Assembly and the Senate;
 - c) The introduction of a new system of government with devolved structures known as the Counties thereby creating 47 Counties in Kenya to be led by an elected Governor through a popular vote;
 - d) The independence of the IEBC was guaranteed by the Constitution;
 - e) The provision of an multi-levelled framework for electoral disputes resolution and the time limit of 14 days for Judicial adjudication of Electoral Dispute ; and
 - f) The provision for the recall of members of Parliament.
20. With regard to the Acts of Parliament mentioned in paragraph 16 that regulate the conduct of elections, these laws provide an institutionalised and orderly framework within

which political and human rights are protected and fair political competition promoted, enabling the participation of citizens and political parties.

The Electoral Act of 2011

21. The Electoral Act of 2011 serves as the primary law governing the conduct of elections in Kenya and regulates the right to vote, the registration of voters, the nomination of candidates, and the required qualifications for aspirant candidates aspiring to elective office. Through making provision in the Act for voter education, the conduct of elections, procedures for the recall of members of Parliament as well as processes of electoral dispute resolution, a clear description of election related offences, electoral dispute resolution and the codification of an Electoral Code of Conduct served to provide citizens, political parties and political aspirants with the assurance that the institutionalisation of a proper electoral framework safeguarding the integrity of the electoral process was properly established.
22. The Mission noted with concern the last minute amendments of Sections 6(3) and 28 and of the Elections Act, 2011. These legislations provide timelines for the finalization of the principal register and submission of party list to the IEBC. The review of these timelines created significant constraints for the IEBC in its planning and implementation of the process. Specifically with the printing of the ballot, the complications experienced with the printing of the ballot led to the postponement of elections in 12 constituencies.

The Political Parties Act

23. The Political Parties Act provides the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya as well as sets out qualifications for the registration of political parties and establishes the Office of the Registrar of Political Parties as the main regulator of the Act. Whilst it is noted that the Registrar of Political Parties will be appointed after the convening of the next Parliament in April 2013, adequate interim arrangements through the IEBC have been put in place.
24. The establishment of a Political Parties Dispute Tribunal and Political Parties Liaison Committee, as conflict management mechanisms to address disputes amongst and between political parties is commendable. The AUEOM noted that this will keep channels of communication between parties and other stakeholders open.
25. The AUEOM however noted the fact that the 2013 elections were conducted without a clear framework for the regulation of party and campaign finance.
26. A Campaign Finance Bill was presented to the 10th Parliament of Kenya for enactment into legislation that was going to regulate the use of money during elections. This law was going to enable the IEBC to fulfil the constitutional provision found in section 88 (2) (i) which makes the Commission responsible for “the regulation of the amount of money that

may be spent by or on behalf of a candidate or party in respect of any election”. This bill was not passed and the electoral process took place without any campaign finance regulations in place.

27. The campaigns by the major political parties and coalitions therefore exhibited very large financial expenditures on items like political advertising and messaging; logistical arrangements such as motor vehicles, fixed wing aircrafts, helicopters and other campaign materials. Smaller political parties were unable to match the scale of financial resources which the major parties displayed and this made for a very uneven playing field as far as campaigning was concerned.

National Accord and Reconciliation Act 2008 and the National Cohesion and Integration Commission

28. Created by the National Accord and Reconciliation Act 2008, following the 2007- 2008 post-election conflict, The National Cohesion and Integration Commission (NCIC) of Kenya is a government agency intended to address and reduce inter-ethnic conflicts through the prevention of discrimination on the basis of race or ethnicity, advocating for cohesiveness among the diverse groups in the country and enforcing the legal provisions of the National Cohesion and Integration Act prohibiting hate speech. The AUEOM noted the commendable efforts of this Commission at monitoring hate speech during the campaigns.

Leadership and Integrity Act, 2012

29. This Act gives effect to Chapter VI of the Constitution of Kenya, 2010 which outlines the basic principles of leadership and promote ethics and integrity for elected public office bearers as well as appointed state officials.

Electoral System

30. The AUEOM noted that the introduction of a mixed electoral system in the 2010 Constitution of Kenya with the proportional allocation of nominated seats for the representation of minorities is a positive step towards ensuring the participation of minorities. The AUEOM also noted the introduction of a two round majoritarian system for presidential elections in which a candidate must obtain over 50% of votes cast and plus a quarter of the votes in more than half of the counties. The AUEOM finds it remarkable that these new provisions will encourage political support beyond ethnic affiliations and embrace Kenya diversity.

Election Dispute Resolution

31. The Mission noted the introduction of a multi-levelled dispute resolution mechanism that addresses disputes arising at different points in the electoral cycles and amongst different parties and bodies. The legal framework also provides clear timelines for the submission and adjudication of complaints and disputes as contained in Article 74 (2) of the Electoral

Act 2011 for a period of 7 days. The explicit provision in Article 74 (3) also ensures that electoral dispute must be resolved expediently before the said election is held.

32. Specifically, the IEBC resolves disputes that arise before the election, including disputes arising out of a candidate nomination process. With a clear specification that cases are to be filed within 3 days and determination made within 7 days of filing including those related to candidate nominations. Disputes that arise subsequent to the announcement of results and which relate to petitions challenging results of parliamentary and senatorial elections are within the jurisdiction of the High Courts. These petitions must be filed within 28 days from declaration of results and a Court must decide the case within 6 months from the date of filing the suit. The Supreme Court has jurisdiction to hear presidential election disputes and cases must be filed within 7 days of the declaration of results with a court having 14 days from the date of filing to reach a determination. The Political Parties Dispute Tribunal addresses a range of disputes within and amongst members of political parties, ranging from disputes between members of a political party and the political party, disputes between political parties, parties in a coalition, as well as disputes between an independent candidate and a political party. In all cases of dispute, appeals on original determinations are to be directed to the High and Supreme courts.

Election Management

33. In line with the principles enshrined in the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa, elections in Kenya are conducted by an independent institution – the IEBC. The Commission is established under Article 88 of the 2010 Kenyan Constitution and the IEBC Act of 2011.

34. It is mandated with the primary responsibility of conducting and supervising referendum and elections to an elective or office established by the Constitution. These offices are – the Presidency, County Governorship, Senate, the National Assembly (including women representatives) and County Assemblies. The Commission is also responsible for the registration of voters, delimitation of constituencies and wards, regulation of party nomination processes and finances, voter education, registration of candidates for elections, facilitation of election observation and monitoring and election dispute resolution.

35. 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 established 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.

36. The AUEOM therefore commends the efforts taken by the Kenyan authorities to ensure that the 2013 elections were conducted by an independent and impartial institution in

accordance with the OAU/AU Declaration on the Principles Governing Democratic Elections in Africa and the African Charter on Democracy, Elections and Governance.

Voter Registration

37. The voter register is a fundamental element of the electoral process, the management of which could impact on the final outcome of an election. In accordance with Section 5 of the Elections Act of 2012, the IEBC conducted a registration exercise for eligible Kenyan citizens that started on 19 November 2012 through to 18 December 2012. IEBC recruited and deployed personnel to the field to obtain data from 25,000 registration centres. For the first time in Kenya's electoral history, the registration of voters was done using Biometric Voter Registration kits which enabled the Commission to capture the following details of registrants: fingerprints, facial features, name, age, gender, and identification number. At the end of the first phase of the registration exercise, the Commission announced a provisional figure of 14.4 million registered voters. The Commission also conducted a verification exercise in January 2013 during which the provisional voters 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) or an online verification through the IEBC website. The Mission noted that the process was transparent, inclusive and user friendly.
38. The AUEOM also noted 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 that was used for biometric verification of voters on Election Day 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 4 EAC countries, due to logistical constraints.

Civic and Voter Education

39. Voter education is an essential part of the electoral process. It is an important means of ensuring citizens participation and a peaceful electoral process. It was particularly significant in the case of Kenya given the number of ballots to be cast on Election Day. The AU LTOs were on the ground and were able to observe the voter education initiatives. The IEBC provided relevant materials to facilitate civic education and sensitisation of the public. These include: Voter Education Curriculum, Voter Education Training Manual, Gender Guide to the Constitution of Kenya and the Handbook on Elective Positions.
40. While the AUEOM noted efforts made by several stakeholders including the IEBC, civil society organisations and others, to educate and sensitize the public ahead of the March 4 General Elections, concerns were raised that majority of Kenyans may not have benefitted fully from the initiatives on civic and voter education as it was conducted over a short period of time.

Political Parties, Candidate Nomination and Campaigns

41. Fifty-nine (59) political parties participated in the 2013 General Elections. Political party primaries and nominations of candidates were concluded 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 deliberate tactic of exclusion. Such incidence can culminate into intra-party conflicts and political instability.

The Campaign Process

42. The 2013 campaign process was regulated by the Code of Conduct for Political Parties. The campaigns effectively started after the nomination processes.
43. Overall, the AUEOM 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 discuss contentious issues in the public domain such as land ownership, ethnicity, corruption, governance, the economy and liveable incomes, as well as the International Criminal Court case.
44. Campaigning was conducted in an atmosphere of contestation and competition, rather than conflict and the AUEOM commends the political parties and candidates for their exemplary conduct during the political campaigns period.

Representation of Women and Minorities

45. The AUEOM noted with satisfaction the provision of special quota for female representatives and for nomination of minorities in the 2010 Constitution which is in line with Article 29 of the African Charter on Democracy, Elections and Governance.
46. However, the AUEOM noted that the decision by the courts not to enforce the two-thirds gender quota for women's representation in parliament, was a setback on the constitutional commitment to ensure equal opportunity to participate in formulation of government policy as stated in the Convention on the Elimination of all Forms of Discrimination against Women, the African Union Protocol on Human and People's Rights on the Rights of Women in Africa and the 2004 Solemn Declaration on Gender Equality in Africa.

47. The 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

48. The Constitution of Kenya 2010 Section 33 (1) provides for the right to freedom of expression which includes freedom to seek, receive or impart information or ideas. The constitution, in Section 34 (1), provides for freedom and independence of electronic, print and all other types of media. Both of these freedoms are, restricted by Section 33 (2) which prohibits their exercise if they are used as propaganda for war, in the incitement of violence, as hate speech or in the advocacy of hatred.

49. The AUEOM 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 election preparations and processes, as well as institutional arrangement and preparedness of the election management body, political parties, political party alliances and coalitions. The media also provided wide coverage of the actual Election Day.

50. While the freedom of the press is guaranteed in the Constitution, there is currently no comprehensive media regulatory framework in Kenya, although there is an Act of Parliament establishing the state-owned media house – Kenya Broadcasting Cooperation.

51. In the lead up to the election, almost all media houses signed the elections coverage Media Code of Conduct 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. The neutrality of the Media reflected in the way it avoided being used as platform for hate speech and other forms of communication that could lead to public incitement.

52. The Mission however observed that media coverage was, skewed in favour of the two dominant political party coalitions CORD and Jubilee with relatively low coverage of the other contesting parties.

53. The Mission also noted that the media also gave coverage of female candidates a relatively lower priority contrary to the Code of Conduct and practice of journalism in Kenya which states that “women and men should be treated equally as news subjects and news sources”.

Preparedness of the Independent Electoral and Boundaries Commission

54. As of 18 February 2013, the IEBC reported that most of the non-strategic election materials had already been received and dispatched to Regional and Constituency

Election Offices. Moreover, the AUEOM takes cognizance of the fact that the printing of presidential, governor, senate and women representative ballot papers had been completed and delivered to the IEBC national office.

55. The IEBC had confirmed that all election staff recruitment for polling stations has been completed and their training was finalized by 28 February 2013. The AUEOM witnessed the training of the trainer's sessions in Kisumu, Nyeri, Murang'a, Kiambu Embu, Uasin Gishu, Meru, and Mombasa counties. The training covered Election Day activities from pre-opening procedures, the actual polling activities up to close of polling procedures.
56. The Commission in its briefing to the AUEOM signalled its readiness for a quick and efficiency transmission of the election results. The Commission assured the AUEOM that the transmission of results would be done in real time through special telephones provided to Presiding Officers. Thereafter a physical submission of the results would be done by Returning Officers at the National Tally Centre in Nairobi.
57. The AUEOM noted with concern the fact that the Commission was unable to make provisions or preparations for special voting for persons on election duty, especially in view of the fact that over 100,000 security and election personnel were deployed during the elections.
58. The AU LTOs assessed that the IEBC was largely prepared to conduct successful elections on 4 March 2013, albeit with concerns for the possible logistical challenges that could be experienced with the conduct of six elections on the same day.

The Judiciary

59. As part of its preparations for the elections, the Judiciary set up a Judicial Working Committee on Election Preparations that was mandated to advise the Judiciary on administrative arrangements for the elections, conduct training of judges and judicial staff and to monitor and evaluate the dispute resolution process in place. The AUEOM noted with satisfaction, the efforts of the preparedness of the Judiciary to adjudicate dispute specifically for the 2013 elections.

Security

60. 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.

61. The appointment of a new Inspector General of Police with the pledge and support to undertake fundamental reforms aimed at objective and professional security service turned around public confidence positively towards 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.
62. The AUEOM appreciates the fact that the Special Police for Elections were deployed throughout the country to police the elections. The provision of training for member of the SPFE under the National Training for Election Security Arrangement Project (NTESAP) and the provision of special security for all the presidential candidates are also commendable.

V. ELECTION DAY OBSERVATIONS

Opening the polls

63. The AUEOM 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 AUEOM opened between 6 am and 6:30 am. An exception to the rule was observed in Kitui County where some polling stations opened about two hours late. The AUEOM 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 IEBC, leading to the recovery of time lost.

Polling stations and election materials

64. 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.
65. The AUEOM also noted 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 with 6 ballots for the respective elections which were colour coded to match the

colour of the ballot boxes 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 AUEOM noted that the ballot was presented in a user-friendly manner with the names, party symbols and photos of the candidates.

66. In most of the stations visited, electoral materials were available in sufficient quantities throughout the day. The AUEOM therefore commends the Commission and security officials for the efficient distribution of materials across the country despite the difficult terrain. The AUEOM also noted the steps taken to manage the voter register, specifically with regard to the challenges experienced in the biometric verification of voter identity.

Voter turnout

67. The AUEOM 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 noted with satisfaction that in most of the stations visited, the turnout of voters was high.

Voting procedures

68. Voting procedures were generally conducted in a peaceful and orderly manner in most of the stations visited. It was however observed that some voters experienced challenges in handling six ballots simultaneously. The AUEOM 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 some 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.

Election personnel

69. All polling stations visited by AUEOM were adequately staffed. It was also noted with satisfaction that the staff displayed a high level of familiarity and conversance with the stipulated procedures. Observers noted that the staff showed a high level of commitment and determination to complete the process despite the fact that they 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

70. The AUEOM noted with satisfaction the recruitment of female election officials, as each station had a significant number of female polling officials. The presence of female security officials, observers and party agents were also observed. With regard to the participation of persons with disability, the Mission noted that some polling station were inaccessible to this group of voters.

Party agents and independent observers

71. The AUEOM noted with satisfaction the presence of national observers from ELOG in most of the stations visited. The presence of party agents was also noted in all the stations visited. The AUEOM therefore commends the level of transparency and participation in the process by civil society and parties. The AUEOM 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

72. The AUEOM noted 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 AUEOM. The AUEOM 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 AUEOM noted with concern the fatal attacks that occurred in Mombasa and Kilifi which led to the deaths of civilians and police officers. It also noted the accidental shooting of a Presiding Officer in Murang'a County. The AUEOM 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

73. 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 AUEOM 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 AUEOM 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 AUEOM also notes with concern the high number of rejected ballots at the polling stations.

VI. POST-ELECTION ISSUES

74. The legal framework provides a 7-day timeline for the official declaration of results of the elections by the IEBC. The Mission noted the efforts made by the IEBC to ensure that the results were tabulated and transmitted in good time.

75. However, there were challenges experienced with the electronic transmission of the results including network failures and suspicions of system hacking. These challenges necessitated a reversion to physical submission of the results.
76. Within the contest of the slow release of the election results and amidst rising tension, the Head of Mission of the AUEOM and his deputy, continued consultation with the major political actors. This was aimed at reducing tension pending the release of the final results of the elections by the IEBC. While the final results were being awaited the leadership of the AUEOM also visited the National Tallying Centre and was present during the announcement of the final results by the IEBC on the 9 March 2013.

VII. RECOMMENDATIONS

Based on its assessment and observations of the 4 March 2013 General Elections, the AUEOM recommends as follows.

Legal framework:

- In line with the African Union Guideline on elections and international best practises, the AUEOM recommends timely amended in future at least six months prior to election for any electoral reform or amendments. The AUEOM also recommends that amendments to the legal framework on elections should provide realistic timelines that do not jeopardise the IEBC's proper planning and conduct of the elections.
- The AUEOM recommends that a comprehensive legal framework for party and campaign finance regulation should be passed into law in the next Parliament to ensure probity, transparency and fairness in electoral financing.
- The AUEOM recommends that the next parliament should enact a comprehensive framework for media regulation into law as this is central to ensuring fair and balanced coverage of the electoral process and the protection of media practitioners from arbitrary restrictions.

The Independent Electoral and Boundaries Commission should:

- In view of the concerns raised about the vulnerability of the process to manipulations as a result of the transition from the biometric and manual system during the counting process, the AUEOM recommends the provision of clear check-and-balance guidelines to secure the integrity of the method of using biometric, ICT and manual devices interchangeably in voting and results administrations. Adequate and extensive testing of the methods over a sustained period of time may guarantee greater success in the near future;
- Make adequate provisions for back-up lighting of polling stations in future elections;

- Provide more polling centres and reduce the number of voters allocated per polling station in future elections, especially in densely populated areas;
- Strengthen the voter education initiatives for future elections;
- Improve the format for the compilation of the voter register to make it more user-friendly;
- Intensify efforts to provide for registration of voters in the diaspora and conduct elections for registered voters outside the East Africa Region;
- Consider the use of deep and brighter colours for the ballot and the ballot boxes in future elections, for easy differentiation by voters;
- Provide guidelines that mandate a general sorting and reconciliation of the ballot before the final counting; and
- Give effect to regulation 161 of the Election General Regulations 2012 to make arrangement for special voting by officials on Election Day duty.

The Media should:

- Provide equitable coverage for female contestants and all political parties as opposed to maintain a primary focus on the larger parties; and
- Give more prominence to the publicity of gender issues and policy matters raised by smaller parties in future elections.

Political parties and civil society groups should:

- Adopt a policy that will improve gender equity in in elective positions. Furthermore, the political parties should improve their efforts at increasing the participation of women and minorities as candidates; and
- Collaborate with the IEBC to undertake civic education.