



**INTERIM STATEMENT
BY CHAIR OF THE
COMMONWEALTH OBSERVER GROUP
2017 KENYA GENERAL ELECTIONS**

*10 August 2017
Nairobi, Kenya*

Statement by: Chair of the Commonwealth Observer Group, HE John Dramani Mahama, former President of Ghana.

Ladies and Gentlemen, thank you for coming to this Commonwealth Observer Group Press Conference, where I will now present the interim assessment of the Commonwealth Observer Group on the electoral process thus far.

We arrived in the country on 31 July, and our Group was preceded by the presence of an advance Observer Team which has been in Kenya since 19 July.

We have met with the Independent Electoral and Boundaries Commission, presidential candidates, political parties, civil society, including women and youth groups, media representatives, the Acting Cabinet Secretary for the Interior, Commonwealth High Commissioners as well as other national and international election observer missions.

A number of our observer teams were deployed around the country on 5 August, to observe the election environment and preparations for the poll.

Ahead of Election Day, our teams met electoral officials, political parties, police and other stakeholders at the county and constituency levels to gain a comprehensive picture of the electoral processes and environment at these levels. The Commonwealth teams also observed the final campaign rallies.

The following is an initial assessment of the critical aspects of the election process and the electoral environment. Our final report, which we will complete prior to our departure, will be issued at a later date.

We laud the people of Kenya for the peaceful and orderly manner in which they exercised their right to vote on 8 August 2017. We noted that voters were able to cast their ballots freely.

The elections were competitive, with freedom of association and participation rights respected and provided for. We received reports, however, that the primaries conducted earlier this year had resulted in large numbers of rejected nominations. This

had resulted in an increase in the number of independent candidates which emerged in these elections.

KEY FINDINGS

Pre-Election Environment

The Campaign

The fundamental rights of candidates, political parties and supporters to assemble and campaign were broadly observed. We were informed in various briefings with stakeholders that the atmosphere at campaigns was vibrant, well-attended and largely peaceful. We were also told that the campaign rallies of the major political parties were very competitive, and that they were highly visible in various parts of the country.

Though we were unable to observe the full campaign period, our teams were able to witness the final campaign rallies of the two leading political parties, which were held in Nairobi and Nakuru. We noted that these final rallies were peaceful, colourful in nature, very well attended and with party leaders addressing enthusiastic crowds.

We commend the peace messages that were conveyed ahead of the elections by several groups including civil society groups, citizen observers and the youth. Despite failed efforts by civil society to encourage the two leading presidential contenders to do a joint call for peace, it was encouraging that both candidates nevertheless did so separately, calling for calm, and for Kenyans to turn out in large numbers on Election Day. We noted, however, that a campaign message advocated by one party, for supporters to protect the presidential ballot by “adopting a polling station”, was found to be in violation of electoral legislation.

The Media Environment

While freedom of speech is guaranteed in the Constitution the Group was told that commercial pressures, and the threat or withdrawal of government advertising creates a risk adverse atmosphere that affects journalistic independence.

The main media concern in terms of the election was the proliferation of 'fake news' and inflammatory online statements. It was alleged that both the ruling party and the opposition coalition had 'attack bloggers' and both the BBC and CNN had to react fast when stories started to circulate in an approximation of their branding and style. It is significant too that Facebook issued a press release (from South Africa) on ways to spot and identify 'fake news' in the Kenya election.

Twitter was also used extensively for propaganda by the political groups as well as members of the public during the heated campaign.

A study for GeoPoll during this period found that trust levels amongst Kenyans for social media as a source of election news was lower than that for mainstream media. However, despite this, a significant proportion of Kenyans cited social media as their main source of election news.

The Electoral and Legal Framework

Kenya's 2017 General Elections were conducted against a background of legislative amendments, as well as intense and protracted litigation. We noted that amendments to the electoral laws brought in a broad range of electoral reforms ahead of the elections on various issues.

We noted also that the implementation of the *Election Campaign Finance Act 2013*, which would compel candidates and political parties to submit their finance details to the Independent Electoral and Boundaries Commission within a set deadline, was suspended and will only come into force immediately after the 2017 General Elections.

Throughout preparation for the polls, the courts of law handled litigation to address issues pertaining to voter registration; the participation of public officials as candidates, procurement of the ballot paper printing, gender parity, and finality of constituency-level results for the presidential election, all of which had an impact on the preparedness of the Independent Electoral and Boundaries Commission and candidates. This resulted in truncated deadlines and disruption of some stages of the electoral process but also illustrated the preparedness of the judiciary to handle electoral disputes in a timely manner.

The integrity of the voter register was also brought into question by a number of those we have consulted in various briefings, with allegations that large numbers of dead persons remained on the register. The Independent Electoral and Boundaries Commission informed our Group that it had contracted KPMG to audit the register, which resulted in a significant cleaning of the register. We were also informed that the voter register had been made publicly available through a biometric verification exercise earlier this year, when voters were encouraged to verify their details, but that only 6 million (35%) of eligible Kenyan electors turned up to verify their details.

Gender Parity Provisions

It was also noted that women aspirants made up nine percent of the processed nominations as reported by the Independent Electoral and Boundaries Commission.

Despite a court ruling that the constitutional provision for two-thirds gender representation should be implemented progressively, the National Assembly failed to enact an appropriate law in time for these elections. It is hoped that this will be addressed in the next electoral cycle.

Election Day

The turnout on Election Day was encouraging, and we noted from media coverage that there were long queues experienced across Kenya. There were reports that voters started queuing as early as 02:00 hrs.

Polling arrangements and Opening of Polls

The majority of polling stations in which our Group observed opened on time, despite some instances where slight delays were attributed to the late arrival of materials, opening procedures not being finalised on time or faulty equipment. We noted that in those cases where delays were experienced, the Independent Electoral and Boundaries Commission extended voting time on a proportional basis to compensate for the late starts.

Queues were lengthy in many cases at the opening of polls, as voters turned up in large numbers. Though the Independent Electoral and Boundaries Commission arranged for queue controllers to assist voters in identifying their allocated polling station, in some cases due to large crowds there were reports of voters being unable to immediately identify their correct polling station.

In most cases, the layout of polling stations was adequate, though there were some instances where the positioning of the voting booths was such that the secrecy of the vote may have been compromised.

We noted that a significant number of polling staff and party agents were female.

The voting process

The voting process and prescribed procedures were largely adhered to throughout the day. Despite a compressed timeline, and concerns about the efficacy of the technology employed, the management of the process by the Independent Electoral and Boundaries Commission is to be commended.

Polling staff were professional, methodical and meticulous in the application of procedures, conducting verification with the utmost care. We noted these efforts were directed at ensuring sufficient transparency in the presence of party agents that were in many polling stations. However, in some cases this slowed down processing time.

Those voters requiring assistance, including pregnant women, the elderly, and those with disabilities were given preferential treatment at the polling stations. We also found that, despite some cases where polling clerks had to resort to alpha-numeric entries, the majority of voters were able to be identified through the biometric verification devices. On the whole, relatively few incidents were reported that had a significant impact on the voting process.

Women, youth, and party agents

Throughout Election Day, it was also commendable to note that women made up large numbers of polling staff and party agents, and continued to make up a significant proportion of those who voted.

Party agents were evident in large numbers, due to the number of political parties contesting these elections, which was commendable as it allowed for a high degree of transparency and oversight over the process.

The Close and Count

At the close of polls at 17:00 hrs, the majority of polling stations had a small number of remaining voters or no queues. All our teams deployed reported that the polls closed peacefully in their respective locations, and that the counts were conducted efficiently and transparently. The counts in general followed the prescribed procedures.

There were reports of a substantial numbers of spoilt ballots, indicating inadequate voter education.

The Tallying Process

The adoption of new technologies by the Independent Electoral and Boundaries Commission for the transmission of results in the electoral process, gave rise to questions of trust in the new system on the part of the opposition. We noted the decision by the Court of Appeal on 4 August to dismiss a suit by NASA, which had called for the elections to be postponed in the event of a total failure of the electronic voter identification and results transmission system. We noted also the assurances provided by the Independent Electoral and Boundaries Commission that results would be transmitted both alpha-numerically, and through a scan of the results form, from each polling station.

The media present here will recall that, at a press conference on the eve of the elections, which Mr Mbeki and I addressed, we had stated that these elections would prove to be a crucial test of leadership. We had called upon all political leaders and others involved in the electoral process to play their roles with due diligence, and to use their influence constructively, to ensure that the process on Election Day, the counting, the announcement of results and events thereafter would proceed smoothly and without incident.

We noted the statements made by Mr Raila Odinga, and his agents, in which he rejected the results being announced by the Independent Electoral and Boundaries Commission as fraudulent and illegal, and had called upon Kenyans to reject the results being issued unless, in his view, they were properly verified. We have viewed these statements seriously.

We are mindful that the process of collating the results is still on-going. I wish to reiterate my earlier call for leadership, and I therefore call upon all political party

leaders and their supporters to show restraint and magnanimity as the results process continues to unfold.

It is vital that all political leaders maintain peace and calm, exercise patience and not stampede the process. The IEBC should be allowed the appropriate time to complete the results process with the necessary due diligence, and any grievances should be addressed through the prescribed legal channels.

In this regard, we commend the reassurance of the Chairperson of the Independent Electoral and Boundaries Commission that results will not be declared until forms 34A and 34B are corroborated prior to the declaration of presidential election results. We are pleased to note that the verification process of these forms at the National Tallying Centre is ongoing, with the participation of candidates' agents.

Overall Conclusion

We want to commend Kenyans for their patience and call for this to continue as the results process continues to unfold. We have followed the whole process and wish to congratulate all on the process thus far.

It is my fervent hope and expectation that the positive, peaceful and orderly atmosphere that we all experienced on 8 August 2017 will continue to prevail as we await the conclusion of this electoral process.

Our overall conclusion is that the opening, voting, closing and counting process at the polling stations on 8 August 2017 were credible, transparent and inclusive. We commend and congratulate Kenyan voters, the staff of the Independent Electoral and Boundaries Commission, political party agents, candidates' agents, the media and all security personnel for their commitment to the democratic process. They were efficient in the conduct of their respective roles, which contributed to the conduct of a peaceful poll on 8 August.

Finally, it is our hope that by bringing this electoral process to a successful conclusion, Kenya will serve as an inspiration for the rising tide of democracy throughout the Commonwealth.

Our full assessment of the entire electoral process will be contained in our final report.