



ΕΒΡΟΠΕΪΣΚΙ ΠΑΡΛΑΜΕΝΤ ΠΑΡΛΑΜΕΝΤΟ ΕΥΡΟΠΕΟ ΕΥΡΟΠΣΚΪ ΠΑΡΛΑΜΕΝΤ ΕΥΡΟΡΑ-ΠΑΡΛΑΜΕΝΤΕΤ
ΕΥΡΟΠΆΙΣΧΕΣ ΠΑΡΛΑΜΕΝΤ ΕΥΡΟΟΡΑ ΠΑΡΛΑΜΕΝΤ ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPEEN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU PARLAMENTUL EUROPEAN
EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

GENERAL ELECTIONS IN KENYA

ELECTION OBSERVATION DELEGATION

2-6 March 2013

REPORT BY KRZYSZTOF LISEK, CHAIR OF THE DELEGATION

Annexes:

- I. List of participating MEPs**
- II. Declaration of Mr Krzysztof Lisek, Chair of the EP Delegation**

INTRODUCTION

Following an invitation on 11 April 2012 from the Chair of the Independent Electoral and Boundaries Commission (IEBC) of Kenya and the decision of the High Representative and Vice-President of the Commission Mrs Catherine Ashton on the deployment of an EU Election Observation Mission (EU EOM), the Conference of Presidents of the European Parliament authorised on 17 January 2013 the sending of a delegation to observe the presidential, parliamentary, and local elections in Kenya.

The European Parliament has always attached the greatest importance to the development of the democratic process in Kenya. Though holding elections since 1962 and a multiparty democracy since 1992, the country had serious institutional problems which made it hard for elections to be completed smoothly. After the violent clashes following the Kenyan elections in December 2007, the 2013 General elections - which took place under a completely new legal framework - were of vital importance for the country.

The EU Election Observation Mission, present in Kenya since 19 January 2013, was led by Chief Observer Alojz PETERLE, a former Prime Minister of Slovenia and a Member of the European Parliament. Altogether the EOM deployed 65 observers (from 26 different EU Member States, as well as from Norway and Switzerland) in the country.

A delegation of the European Parliament joined the EU EOM on 2 March. The delegation, led by Mr Krzysztof LISEK, was also composed of Mr Eduard KUKAN, Ms Eleni THEOCHAROUS, Mr Enrique GUERRERO SALOM, Mr Patrice TIROLIEN, Mr Jan MULDER, and Mr Jacek WŁOSOWICZ.

The Delegation wishes to highlight its excellent cooperation with, and express its particular thanks to, the EU Election Observation Mission and the EU Delegation in Kenya.

BACKGROUND

The 2013 elections were the fifth consecutive General Elections after the reintroduction of the multiparty system in Kenya in 1991. In 2007, Mwai Kibaki, the then incumbent President, officially won the presidential elections with 46.4% against the opposition leader, Raila Odinga, who got 44.1% of the votes. After the announcement of the results, widespread violence on an ethnic basis erupted across the country for several weeks. More than 1,200 people were killed and some 300,000 displaced from their homes. Following this, a Kofi Annan-led dialogue resulted in the formation of a coalition government, with Mwai Kibaki as President and Raila Odinga as Prime Minister. This was followed by the adoption of a new constitution in 2010.

Political competition in Kenya continues to settle into a familiar pattern of alliances formed along ethnic lines. For the 2013 elections, the political parties were grouped in coalitions, the main ones being the Jubilee Coalition of Uhuru Kenyatta and William Ruto (both of whom are facing charges for crimes against humanity before the International Criminal

Court) and the Coalition for Reform and Democracy (CORD) alliance of Raila Odinga and Kalonzo Musyoka.

Though Kenya has made efforts to restore national cohesion, fears of renewed tensions remained during the elections, and the political environment was still considered volatile.

ORGANISATION OF THE ELECTIONS

Kenya's electoral framework - based upon a new Constitution and completely rewritten after the 2007 post-election violence, and including most of the recommendations of 2007 EU Election Observation Mission to Kenya and 2008 Kriegler Commission - provided a good basis for the conduct of democratic elections. The 2013 elections therefore constituted the first major test for the new 2010 Constitution, for the many implementing laws (including a new Electoral Act; a Political Parties Act; a Campaign Financing Bill; and the Independent Electoral and Boundary Commission (IEBC) Bill, all from 2011), and for the reformed judiciary.

The main novelties, introduced by the Constitution, include a bicameral parliamentary system, devolved government to 47 counties and elections for six offices in one general election (the President, Senator, Governor, Member of Parliament, Women's Representative, and County Assembly Representatives). Under the new electoral system, a Presidential candidate is elected winner if he obtains a majority (50 % plus one) of the votes and secures at least 25 % of the vote in 24 out of the 47 counties. If not, a run-off between the two most popular candidates is required.

Despite all improvements in the electoral framework, some shortcomings still remained, mainly concerning campaign financing and gender quotas. While it was positive that the new Constitution eliminated gender discrimination and introduced gender quotas in all elective and appointed bodies (by a minimum one third gender requirement), no legal framework was put in place to implement this principle for the 2013 elections. Instead, it was decided that the quota would be implemented progressively by 27 August 2015.

With regard to the electoral administration, the Independent Electoral and Boundaries Commission (established as an independent body by the 2010 Constitution and effectively created in August 2011) enjoyed a high degree of support and trust among the citizens. The IEBC was set up through a long, rigorous and transparent consultation process carried out to elect the commissioners and culminating in the approval by the National Assembly and the President.

The EU EOM noted that the efficiency of the IEBC was sometimes hindered by inconsistencies in the decision-making process, resulting in a series of delays such as a three-month delay of voter registration due to procurement difficulties, late decisions regarding polling stations and distribution of materials. In addition, the IEBC's investment in technology to ensure transparency and efficiency - specifically in relation to voter registration and identification as well as the processing of results - failed to deliver. The collapse of both the Electronic Voter Identification Device (EVID) and the Electronic

Transmission of Results System (ETRS) removed the guarantees which technology was supposed to bring to the elections.

What is more, according to the EU EOM the processing of official results was lacking in transparency. Neither election observers nor party agents had adequate access to the processes in the constituency, county and national tallying centres.

CANDIDATES

There were 59 political parties that competed in the 2013 elections, with eight presidential candidates taking part in the contest. Political competition was characterised by the formation of strategic alliances. Given that the coalitions were organised along ethnic lines and the personalities of the key party leaders, the political platforms/programmes of these alliances participating in the elections did not differ significantly.

The two main contenders in the elections were the Jubilee coalition and the CORD alliance.

The Jubilee coalition was made up of Uhuru Kenyatta's The National Alliance (TNA) and William Ruto's United Republican Party. Both leaders are indicted for crimes against humanity before the International Criminal Court (ICC). This alliance represented a formidable force, combining two of the most important communities - the Kikuyu and the Kalenjin. Nevertheless, relations between these two groups have been historically tense — with competing claims over land-rights in the Rift Valley — and many of the victims of inter-communal violence resulted from clashes between both groups. This clearly raises questions about the longer term stability of this alliance, in particular at the local level.

The Coalition for Reform and Democracy (CORD) alliance was led by Raila Odinga (Orange Democratic Movement) and Kalonzo Musyoka (Wiper Democratic Movement). Their coalition also included a group of leaders from Western Province - Moses Wentangula's FORD-Kenya. These parties represented the Luo, Kamba and Luhya communities and got most of their support from the Coast, Western and Nyanza provinces. The CORD was campaigning on a platform of national solidarity, complemented by a rejection of electing a president that is indicted by the ICC as this would have a negative effect in the country.

A third force — although very far behind the first two — was the Amani coalition led by Deputy Prime Minister and political veteran Musava Mudavadi. A former Odinga ally, Mudavadi briefly joined the Jubilee coalition but left when he was not accepted as Presidential candidate.

It should be pointed out that the level of participation of women as candidates in these elections was very disappointing. The fact that the gender quota did not apply for these elections had a de-motivating effect on the parties in their efforts to achieve equality in the candidate nomination process. Of 232 candidates for 47 governor seats, only six candidates were women (2.58%). Out of the total number of 240 candidates for 47 elected Senate positions, 20 candidates were women (8.3%).

ELECTION OBSERVATION

Civil society was very active in election observation, thus contributing to increased transparency before and on Election Day. The largest domestic group - the Elections Observation Group (ELOG), consisting of 11 NGOs - observed the voter registration process and deployed thousands of observers on Election Day. ELOG also conducted a Parallel Vote Tabulation.

Besides the EU EOM, other international observers were also deployed in the country, including teams from the Carter Center, East African Community, African Union and the Commonwealth. Prior to and after Election Day, the EU EOM held coordinating meetings with the other international observer organisations in the country.

PROGRAMME OF THE EP DELEGATION

Before Election Day, the EP Delegation met the EU EOM's Core Team and the Chief Observer Alojz Peterle which provided a full briefing on the pre-electoral situation in Kenya. The Delegation also met with the EU Head of Delegation in Kenya, Ambassador Briet, and the Member States' Ambassadors. This meeting was rather interesting and important for the EP election observation Delegation, in view of the fact that Member States' officials in Kenya, as well as the international community as a whole, were being accused of impartiality and interfering with the elections by the Jubilee Alliance frontrunners Uhuru Kenyatta and William Ruto.

In order to have a general overview of Kenya's political landscape, the Delegation held meetings with several candidates and political party leaders, the Chairman of the Independent Electoral and Boundaries Commission, as well as civil society representatives. The Head of the EP Delegation, Mr Lisek, also participated in pre- and post-electoral coordination meeting of the different international election observation organisations present in the country.

ELECTION DAY

On a largely peaceful Election Day, the EP delegation split into three groups to observe in Nairobi and Naivasha. The three teams observed from the opening (6:00 a.m.) to the closing and counting. All EP teams deployed reached similar conclusions, which were in accordance with the EU EOM observations.

- Election Day kicked-off slowly, with some polling stations delaying the opening due to malfunctioning of the Electronic Voter Identification Device. As a result, in many polling stations the paper Voter List was used.
- Voting and counting took place in a generally peaceful and calm atmosphere, even if the day started with the tragic deaths of Kenyans, including police and polling station agents, as well as Red Cross staff in a violent attack in Mombasa.
- Participation rate was very high, with people orderly queuing in front of the polling stations to cast their vote.

- Polling procedures were executed in a transparent manner, with domestic observers and party agents closely following the voting and counting.
- Polling staff was competent and efficient, which contributed to the successful Election Day.
- Women played a very active role as polling station managers, agents and observers on Election Day.

As already mentioned, election observers unfortunately did not have adequate access to observe the tallying processes.

After Election Day, the EP delegation held an internal meeting to discuss its observations. A debriefing with Chief Observer Peterle and the EU EOM Core Team also took place.

JOINT PRESS CONFERENCE

On Wednesday 6 March, the Chief Observer Alojz Peterle presented the preliminary statement of the EU EOM and Mr Lisek spoke on behalf of the EP delegation, in his capacity as Chair of this delegation.

Mr Lisek pointed out that the European Parliament Delegation was impressed by the active engagement of the people of Kenya in the electoral process. The Delegation witnessed the confidence of Kenyans in the IEBC, the transparency and commitment of the staff at the polling stations as well as the determination and patience of the voters.

At the same time, Mr Lisek encouraged the Kenyan authorities to address, in the near future, the shortcomings of these elections which included problems with the technology used on E-Day; the unacceptably high number of disenfranchised especially amongst the youth; as well as the very weak participation of women as candidates in the elections. Finally, he underlined that these elections - being rather calm and orderly so far - were a good basis for erasing the painful memories of 2007 and opening the way to long-lasting peace and stability. For this to be achieved however, all political stakeholders and voters must respect the results of the election and address any complaints they have through the rule of law.

FINAL RESULTS

According to the Independent Electoral and Boundaries Commission, a record 85,91% of Kenya's 14.3 million registered voters cast their ballots on Election Day.

On 9 March, Uhuru Kenyatta was declared the President Elect of Kenya by the IEBC. Kenyatta received 6,173,433 votes, officially representing 50.07% of the total votes cast, with 25% in 32 of Kenya's 47 Counties. His rival, CORD's Raila Odinga, won 5,340,546 votes, representing 43.31%.

| Presidential Candidate/ Running mate | Coalition/ Party | Popular Vote | % of Cast Votes | % of Valid Votes |
|-------------------------------------------------|-----------------------------------------|-------------------------|----------------------------|---------------------------------|
| Uhuru Kenyatta/ William Ruto | Jubilee Alliance/TNA | 6,173,433 | 50.07% | 50.51% |
| Raila Odinga/ Kalonzo Musyoka | Coalition for Reforms and Democracy/ODM | 5,340,546 | 43.31% | 43.70% |
| Musalia Mudavadi/ Jeremiah Ngayu Kioni | Amani Coalition/UDF | 483,981 | 3.93% | 3.96% |
| Peter Kenneth/ Ronald Osumba | Eagle Alliance/ KNC | 72,786 | 0.59% | 0.60% |
| Mohammed Abduba Dida/ Joshua Odongo Onono | Alliance for Real Change | 52,848 | 0.43% | 0.43% |
| Martha Karua/ Augustine Lotodo | National Rainbow Coalition-Kenya | 43,881 | 0.36% | 0.36% |
| James ole Kiyiapi/ Winnie Kaburu | Restore and Build Kenya | 40,998 | 0.33% | 0.34% |
| Paul Muite/ Shem Ochuodho | Safina Party | 12,580 | 0.10% | 0.10% |
| Votes Cast | | | 12,330,028 | 100% |
| Valid votes | | | 12,221,053 | 99.12% |
| Spoilt votes | | | 108,975 | 0.88% |

Voter turnout 85.91% (Registered Voters: 14,352,533)

The results for Governor, Senator and National Assembly also illustrated the tight race between the CORD and Jubilee alliances. Jubilee dominates the National Assembly with 167 elected members against 141 for CORD (out of 349 seats in total), and therefore does not have an absolute majority. There is no clear majority in the Senate, where the two main alliances CORD and Jubilee have 20 and 21 elected senators respectively. Given this context, the smaller alliances and political parties, such as Amani Coalition will be able to play a decisive role during negotiations for majority control of the Senate and National Assembly.

At the same time, despite affirmative action, out of the elected 290 National Assembly members only 16 were women (5.5%). Together with the 47 women representatives and 4 women nominated to represent special interests, the current National Assembly has 67 women, i.e. 19% of the total 350 National Assembly members. No woman was elected as senator (outside of the 16 seats reserved for women) or governor.

The announcement of the presidential results was received very differently by the Jubilee and CORD Alliances. While the Jubilee accepted the election results, CORD challenged their validity and, following the provisions of the Constitution, filed a petition at the

Supreme Court that accused the IEBC of failing to conduct credible elections. On 30 March, in a unanimous ruling the six judges of the Supreme Court upheld Jubilee leader Uhuru Kenyatta's victory as president. They proclaimed that the elections were conducted in compliance with the constitution and the law. CORD announced that the Supreme Court ignored anomalies and discrepancies detected during the scrutiny and re-tallying of presidential votes, but noted that - as the Supreme Court was the final arbitrator in presidential election disputes - it will abide by its decision.

After the Supreme Court upheld the election of Uhuru Kenyatta as president, violence erupted in the Kisumu County, as a result of which 2 people died and some 60 people were displaced. As a whole however, the post-election situation in the country remained calm.

CONCLUSIONS AND RECOMMENDATIONS

The Election Observation Mission of the European Union remained in Kenya until the end of the post-election process and will present a final report on the elections in May 2013. This report will contain recommendations to the authorities of Kenya, aiming to improve certain aspects of the electoral process for future elections.

The election observation Delegation of the European Parliament as part of long-term EU mission was an important tool in the evaluation of the electoral situation in Kenya. The delegation recommends that the Democracy Support and Election Coordination Group, the Committee on Foreign Affairs, the Committee on Development and the relevant Delegations monitor the findings and recommendations of the final report of the EU EOM and use it as a basis for their political dialogue with Kenya.

EUROPEAN PARLIAMENT
GENERAL ELECTIONS IN KENYA
ELECTION OBSERVATION DELEGATION

1-6 March 2013

Members

Mr Krzysztof LISEK PL (EPP)
Mr Eduard KUKAN SK (EPP)
Ms Eleni THEOCHAROUS CY (EPP)
Mr Enrique GUERRERO SALOM ES (S&D)
Mr Patrice TIROLIEN FR (S&D)
Mr Jan MULDER NL (ALDE)
Mr Jacek WŁOSOWICZ PL (EFD)

4 March Elections in Kenya

Declaration of Krzysztof Lisek, Head of the EP Delegation

Ladies and gentlemen of the press,

the world's eyes focussed on Kenya's 4th of March elections -and the people of Kenya have responded with an impressive engagement on Election Day !

The European Parliament - the only directly elected body of the European Union and representing 500 million European citizens - closely followed these crucial elections for the country. As Chairman of the European Parliament's election observation delegation to Kenya, I have the honour of speaking on behalf of my colleagues, who are coming from six different European countries and are representing four political groups of the Parliament.

During our stay in the country, we met the electoral authorities, representatives of political parties and civil society, as well as observing in Nairobi and in Naivasha on Election Day.

First of all, I would like to align ourselves with the conclusions of the European Union Election Observation Mission and fully endorse the findings presented by the Chief Observer, Mr Alojz Peterle.

According to our observations, the Election Day was largely calm and orderly; even if the day started with the tragic deaths of Kenyans, including police and polling station agents, as well as Red Cross staff in a violent attack in Mombasa. I extend my condolences to the family and loved ones of those killed.

Despite some organisational problems, which resulted in delays at polling stations as well as unnecessarily long queues, Kenya's stakeholders endeavoured to run a successful election. During Election Day we witnessed the confidence of Kenyans in the Independent Electoral and Boundaries Commission (IEBC), the transparency and commitment of the staff at the polling stations as well as the determination and patience of the voters.

There are certainly lessons that can be learned, such as the need to test technology thoroughly in advance, the unacceptably high number of disenfranchised especially amongst the youth, and the need to manage queues outside polling stations. Of course, long queues do not merely indicate logistical problems; they are a sign of something encouraging - which is the clear interest of Kenyans to take responsibility for their future by participating in the elections.

We have also seen that women in Kenya have participated in large numbers as voters and in the organisation of the elections. But we would also like to see more women in positions of political leadership at all levels. Therefore we call for the speedy realisation of the principles in the Kenyan Constitution on gender representation in all elective and appointed bodies.

The fact that these elections have so far been rather calm and orderly is a good basis for erasing the painful memories of 2007 and opening the way to long-lasting peace and stability. In order to achieve this all political stakeholders and voters must respect the results of the election and any complaints addressed through the rule of law.

I also want to say that as representatives of European citizens we know that the path to lasting peace is long and difficult. But it can be achieved as has recently been recognised in the award to the EU of the Nobel Peace Prize. We in the European Parliament are ready to work with Kenya in building a prosperous and peaceful future, for the common benefit of our peoples.

To conclude, I would like to point out that the European Parliament's election observation work does not end today. We will pay close attention to the post-electoral situation in the country, and will follow up on the final report of the European Election Observation Mission and its recommendations.

Thank you very much.