



**INTERIM STATEMENT
OF THE
COMMONWEALTH OBSERVER GROUP
BY THE CHAIR, THE HON BRUCE GOLDING
KENYA GENERAL ELECTIONS 2022**

*11 August 2022
Nairobi, Kenya*

INTRODUCTION

Good morning to you, the people of Kenya, members of the media, fellow observers, members of the diplomatic corps, ladies and gentlemen. Thank you for coming to this Commonwealth Observer Group Press Conference, where I will now present the interim observations of the Commonwealth Observer Group on the electoral process thus far. The final report, setting out our full findings on the entire process and our recommendations in greater detail, will be submitted to the Commonwealth Secretary-General.

The Commonwealth is honoured to have been invited by the Independent Electoral and Boundaries Commission of Kenya to stand in solidarity with all Kenyans through this significant election. This is the third general, and the fourth presidential, election Kenya has held since the promulgation of the 2010 constitutional referendum.

Our Group was constituted by the Commonwealth Secretary-General, The Right Honourable Patricia Scotland QC. It comprises experts drawn from the political, legal, media, civil society and electoral fields and from several Commonwealth regions. We arrived in Kenya on 2 August, having been preceded by a Commonwealth advance Observer Team that has been in the country since 16 July.

On 7 August, we deployed ourselves in small teams across the country to observe the prevailing environment and gain a comprehensive picture of final preparations before Election Day.

Prior to our deployment to the regions, we were briefed in Nairobi by various stakeholders, including the Independent Electoral and Boundaries Commission (IEBC); presidential candidates or their representatives; political parties; media houses; social media platforms and fact-checking organisations; security agencies; Commonwealth High Commissioners; and various civil society organisations, including women and youth

groups; and persons with disabilities. We also established working relationships and exchanged information with other international observers as well as local citizen observer groups.

KEY FINDINGS

Let me begin by commending the largely peaceful environment that has prevailed in the pre-election period and commend the efforts by political parties, their leaders, presidential candidates, and the people of Kenya, to foster a peaceful environment in the lead-up to the 2022 General Elections. I also wish to commend the IEBC for undertaking the preparations for these elections in the face of numerous challenges, not least the lack of sufficient, guaranteed and predictable funding by Government over the five-year period preceding the election. We note that various COVID-19 mitigation measures were put in place by the IEBC to ensure that these elections were conducted safely and securely.

We noted that voters were largely able to cast their ballots freely. The elections were competitive, with freedom of association and participation rights provided for and respected. By and large, there was an understanding that any disputes arising would be referred to the courts. We were reassured to hear that the judiciary commands public confidence. We will reflect further on these issues in our Final Report.

Legal and Electoral Framework

We note that the Constitution of Kenya (2010) guarantee fundamental democratic and political rights, including the right to vote and participate in regular elections for all Kenyans. The electoral laws regulating elections are, however, not consolidated, which leads to uncertainty.

Legal and Judicial Challenges

The introduction of election technology in the form of a digital system, the Kenya Integrated Elections Management System (KIEMS), which is used for the biometric identification of registered voters, resulted in controversy and confusion prior to the elections, regarding its reliability.

The lack of a comprehensive review of the Electoral Act and of the KIEMS system has led to some uncertainty in the electoral process. I will comment on the impact of this shortly in our assessment of Election Day.

The multiplicity of unconsolidated amendments to the electoral laws has also complicated the administration of elections in Kenya, and resulted in its ambiguity. These complications hampered the IEBC's electoral preparations and resulted in rulings

which necessitated last-minute changes to procedures. It is noted, for example, that the issue of whether the digital or printed register would be the primary mechanism to verify voter identity was only decided the day prior to the elections, following a ruling by the Court of Appeal. Kenya may wish to consider the establishment of a specialist court to deal with election-related matters.

Election Administration

KIEMS kits: Biometric Voter Registration, Voter Verification and Electronic Transmission of Results

The introduction of election technology in the form of a digital system, the Kenya Integrated Elections Management System (KIEMS), which is used to register and identify voters using biometrics, resulted in much controversy and ambiguity prior to the elections, regarding its reliability in facilitating the electoral process.

The Group notes that the IEBC applied a lessons-learned approach from the 2017 elections, and adopted new software and hardware through the requisition of the KIEMS kit from a company called Smartmatic. It was noted that the IEBC undertook two simulation exercises of the KIEMS kits for the electronic transmission of results, the second of which our Advance Team was able to observe. We acknowledge these efforts, as the transparency they displayed contributed to building confidence in this key feature of the electoral process. This clearly illustrates a commitment on the part of the IEBC to improve vital aspects of the electoral process since the 2017 General Elections.

Voter Registration

Ahead of this election, we noted the IEBC's efforts to address the low number of young voters that had registered since 2017, embarking on a two-phased 'Enhanced Continuous Voter Registration (ECVR)' exercise in October 2021, and January 2022. We note that the goal of registering six million new voters was not met, with only 2.4m additional voters registered by the conclusion of the second phase. We encourage the IEBC and the country as a whole to reflect on this experience in its post-election review, and recommend strengthened voter education as one measure to counter voter apathy, increase the number of registered voters who will register, thereby enhancing participation in the electoral process.

Voter education and strategic communication

We recognise the IEBC's initiative in producing various types of information materials and posters to promote and educate voters on these elections. However, we observed

a lack of effective communication, both internally and externally, to update both polling staff and Kenyan citizens on vital benchmarks of the electoral process. We are pleased to note the IEBC took on board recommendations to improve its communication in the weeks leading up to Election Day to manage public expectations following Election Day, while the results process is finalised. This includes the establishing of a media centre for live media briefings and setting up a call centre to handle inquiries from the public.

We recommend that the IEBC considers training for all its staff to enhance its strategic communication capabilities, transparency and accountability. We also recommend the creation of a dedicated funding stream for voter education.

The Campaign

In various briefings by stakeholders, the Group learnt that campaigns were colourful, well-attended and largely peaceful. We also learnt that the campaign rallies of major political parties were very competitive, and that they were highly visible in various parts of the country, with fundamental rights of candidates, political parties and supporters to assemble and campaign generally respected.

We commend the efforts made to provide security for all the presidential candidates throughout the campaign period.

Our Group notes reports of vote-buying by some candidates and political parties.

We were informed that there have been challenges in progressing the Elections Campaign Financing Act and campaign finance regulations, with the aim of regulating funding and spending during elections and referendums. It is recommended that the Kenyan Government and IEBC revisit key stakeholder consultations required for consensus-building towards achieving full implementation of the Act.

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Media

Traditional media have covered the process adequately, linking the outcomes of the elections to the economy, anti-corruption and governance. There was a tendency to repeat unsubstantiated information and unwarranted criticisms regarding the conduct of the election without checking the accurate position with the IEBC. The traditional media had a healthy coverage of the campaign, with a fair coverage of all sides, including giving space to those critical of the candidates and the political parties.

Newspapers and broadcasters carry sponsored content by candidates and political parties. We recommend that they should always disclose and identify political advertorials paid for by interested parties.

The Group notes that, while social media has provided a cheaper alternative for marginalised groups and otherwise economically excluded aspirants, to discuss their issues, stakeholders generally raised concerns about online mis- and disinformation and hate speech - particularly that which is an incitement to violence - on social media by politicians and their supporters.

We note that, in signing an MoU with Meta, the IEBC has seen the importance of collaborating with social media organisations. We urge well planned systemic and inclusive engagement with all social media platforms and specialist fact-checking organisations in future elections.

We strongly urge social media platforms to act quickly on reports of targeted online harassment of women politicians. We also condemn pockets of harassment targeted at journalists covering the campaign as well as the exclusion of specific journalists, perceived as hostile to a particular aspirant from information about that aspirant, and ask that the Media Council of Kenya to investigate and report these matters.

Participation and Inclusion

Financial constraints remain a major impediment to potential candidates, particularly women and youth.

The IEBC attempted to have political parties comply with the two-thirds gender rule. While we note that political parties have made commitments to this effect in their manifestos, we call upon political parties to increase capacity-building and to put in place robust implementation plans. There has been some improvement on the implementation of the two-thirds gender principle, but more political action and investment is required.

ELECTION DAY

Eve of Poll

Commonwealth Observers were deployed to 20 counties across Kenya. They met key stakeholders in these counties, who expressed confidence in preparations ahead of polling day and optimism that the polls would be conducted in a peaceful manner. Other citizen and international observers were visible in the counties where they evaluated final preparations.

We were impressed at the improvements in the Commission's readiness. IEBC officials were observed preparing the sensitive materials ahead of the vote with the assistance of security personnel. In some cases, voting materials were received late which meant that IEBC officials had a very long night sorting out materials. At some polling stations, the displayed voter lists had not been pinned securely, causing them to be damaged. In some instances, the voter lists had been vandalised.

We also noted and applaud the IEBC for taking immediate action to deal with emerging problems, including postponing polling in isolated cases due to insecurity issues and sacking polling officials who had violated electoral rules and procedures.

Also, our observers noted that, where printing errors with some ballots had been discovered, the affected returning officers were swift to notify the IEBC in Nairobi of the discovery. It is commendable the IEBC also took swift action and suspended elections for the affected elective seats, and soon thereafter communicated the new election date of 23 August. Greater effort must be made to avoid such an occurrence.

The fact that the Court of Appeal's late ruling I referred to earlier, of whether the digital or printed register would be the primary mechanism to verify voter identity, was only decided the day prior to the elections, also had an impact on the conduct of the poll.

Advance Voting

We noted that no arrangements for early or advance voting currently exist for polling staff, security personnel, or other essential workers who are required to work on Election Day away from the locations where they are required to vote. We would recommend that the IEBC considers this issue in its post-election review to ensure that no Kenyan citizens are unintentionally disenfranchised in future elections.

Opening and Conduct of Polls

I wish to commend the people of Kenya for the peaceful and orderly manner in which they exercised their right to vote on 9 August 2022.

Our observers reported that most polling stations opened on time and that all pre-poll procedures were generally adhered to. In those cases where the openings were delayed,

it was noted that the IEBC granted all presiding officers the mandate to extend polling hours by the same length of time as the initial delay.

Long queues of voters waited patiently for their turn. The queues were calm and orderly. Voters expressed their commitment to peaceful elections.

The location of polling stations, mainly in schools or in tents on open fields, necessitated adequate signage, but we noted that voters struggled to identify their polling stations or streams from the displayed voters lists. While realising the size of voting centres are not identical, the serious space constraints for some polling station needs to be addressed so that IEBC has minimum common standard for voting station size to manage the voters, IEBC staff, agents and observers at locations across the country.

Some voters had not been aware of or able to access the IEBC webpage or SMS system, which would have allowed them to identify their polling station before they arrived to cast their ballot. Some voters complained that their registration to vote had been transferred somewhere else. We would recommend that better signage be introduced to guide voters.

Polling staff were generally efficient, meticulous, and highly transparent in the conduct of their duties. However, there were a few inconsistencies in the application of procedures or in their communication when dealing with queries on the process, especially in their interaction with party agents. They would benefit from additional training to respond to any challenges that may arise during the conduct of their duties, to minimise such anomalies in the future. At some locations, particularly in rural areas, the conditions in which polling staff were expected to work, often overnight, was grossly unsatisfactory, and should be improved.

The use of the KIEMS to verify voter identity proceeded largely smoothly. However, we note that the IEBC in their media briefings acknowledged the failure of around 200 of the more than 46,000 KIEMS kits. Though there was some concern about those cases where the KIEMS kit failed to read some voters' fingerprints, the polling staff were nevertheless able to resort to alternative measures to identify voters, including entering the alphanumeric ID number of the voter to access their details, and taking a photo on the device. In some cases, voters were sometimes advised to wash their hands and return if verification process failed.

COVID-19 Protocols

While COVID-19 protocols were adhered to in many cases, it was noteworthy that this was not always the case by some polling staff and voters.

Participation and Priority voting

Voters were witnessed voting freely, and we applaud all polling staff and security personnel for being proactive in assisting and granting priority to the elderly, pregnant and nursing mothers, persons with disabilities, and others. In some polling stations, we observed that there was some variation in how this was managed.

Prison voting

We commend the IEBC for abiding by constitutional provisions to allow prison voting for the presidential election. Our Group was able to observe prison voting in a number of locations. We also commend the initiative to appoint designated welfare officers to assist and facilitate voting in prisons. We noted, however, a significant proportion of prisoners did not have identification documents to enable them to vote. We observed released prisoners returning to the prison to vote. Ironically, the prison staff were themselves effectively disenfranchised. We will make recommendations on addressing this in our Final Report.

Party agents

Party agents were present in all polling stations observed in significant numbers and were alert and attentive in the conduct of their duties. We did not receive any reports of agitation or dissatisfaction, and any disputes were resolved satisfactorily with polling staff. Noting that voter identity is conducted digitally, party agents do not have the benefit of engaging with this aspect of the process. It is recommended that party agents be as engaged to build greater confidence in the electoral process.

Security

Security was present at every polling station observed, and the Group noted that many women were deployed as part of the security detail. All were professional and carried out their duties diligently, and should be commended for their role in maintaining peace during this period.

Situation Room

The Group visited a number of CSO Situation Rooms hosted by citizen observers. These initiatives are beneficial as they enhance transparency and provide a national perspective on key data emerging from the electoral process, especially on Election Day. This instils a level of confidence in the electoral process, and should therefore be encouraged.

Close and Count

It was observed that those who were in the queue at the 5pm close of polls were allowed to vote.

The close and count followed due process, with a high degree of transparency. Polling staff undertaking the count were clear and methodical in the conduct of their duties, and any disputes that we observed were settled amicably. The IEBC, its polling staff and party agents are commended for this.

The Tallying Process

While the use of the KIEMS kit for the electronic transmission of results gave rise to some questions of trust in the new system, the Court of Appeal's decision in its ruling on 8 August provided clarity on this aspect for Election Day.

As far as we were able to observe, the results transmission phase commenced fairly smoothly with few issues reported. We are conscious that this is an ongoing, and crucial, phase of the electoral process. We are still observing this process and will provide a thorough assessment in our Final Report.

As the results management phase of the electoral process reaches its finalisation, we call upon all political party leaders and their supporters to continue to show restraint and magnanimity.

The IEBC should conduct the results announcement process with all the necessary due diligence and transparency. The time lag between the announcement of the official results by the IEBC and the provisional, and at times conflicting, results announced by the media is an area of concern. Special attention needs to be given to how to expedite the official announcement of results without compromising the integrity of the process.

CONCLUSION

We would like to express our appreciation to all international and national observer groups we met on Election Day for the cooperation and exchange of views on the unfolding process.

It is our hope that by bringing this electoral process to a successful conclusion, Kenya will serve as an inspiration for the Commonwealth and indeed, the rest of the world, that relevant lessons have been learned from the past, and that each successive election is an improvement on the previous one.

Our full assessment of the entire process, including any recommendations for improvement, will be contained in our final report, which will be made available to the public. We will continue to observe the results process.

Asanteni sana.

Ends.

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