



**EUROPEAN UNION  
ELECTION OBSERVATION MISSION  
KENYA, GENERAL ELECTIONS, 27 DECEMBER 2007**

**PRELIMINARY STATEMENT**

**Doubts about the Credibility of the Presidential Results  
Hamper Kenya's Democratic Progress**

**1 January 2008, Nairobi**

*The European Union Election Observation Mission (EU EOM) has been present in Kenya since 14 November 2007 following an invitation from the Government of the Republic of Kenya and the Electoral Commission of Kenya. The EU EOM is led by Alexander Graf Lambsdorff, Member of the European Parliament. The EU EOM deployed 152 observers from 26 EU Member States and Norway. The observers were deployed throughout Kenya to observe and assess the electoral process in accordance with international and regional standards for elections. The EU EOM was joined by a four member delegation from the European Parliament, led by Jan Mulder, Member of the European Parliament, which endorses this preliminary statement. On election day, observers visited 752 polling stations in all the Provinces of Kenya to observe voting, counting and the tabulation of results. The EU EOM will remain in country to observe post-election developments. This statement is preliminary; a final report including recommendations for future elections will be published in February 2008. The EU EOM is independent in its findings and conclusions.*

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**Preliminary Conclusions**

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- **The 2007 General Elections have fallen short of key international and regional standards for democratic elections. Most significantly, they were marred by a lack of transparency in the processing and tallying of presidential results, which raises concerns about the accuracy of the final result of this election. On the positive side, the outcome of the parliamentary elections appears to command greater confidence by election stakeholders.**
- **While the elections were competitive and generally well administered prior to tabulation, they also saw significant levels of ethnically based violence, including loss of life by a number of citizens. Also, there was a lack of a fully level playing field between contestants. Use of State resources was reported for campaign purposes by some incumbents and the state owned media's coverage was biased.**
- **On election day, voters turned out in high numbers, showing their commitment to genuine elections by largely peaceful, patient and vigilant behaviour. Polling and counting were generally well administered. While voting started late in**

around a third of polling stations visited, this was generally compensated by late closing. The widespread presence of political party agents and domestic observers contributed to the transparency and confidence in the voting process. When assistance was given to voters by Election Commission of Kenya (ECK) officials and party agents, the secrecy of the vote was breached in many cases. Multiple voter lists in polling stations increased the risk of multiple voting. Counting was slow and delays in the tabulation of results led to unrest in many parts of the country.

- EU EOM observers were generally welcomed by voters, party agents and election officials at the polling stations. At the tallying centres however, they encountered problems of access and information, particularly in Central Province. Transparency was not always maintained at a national level either. At ECK headquarters, the EU EOM electoral expert was forbidden entry into the tallying room on various occasions, despite clear and public instructions from the ECK chairman that he be granted access.
- The applicable laws generally provide a workable framework for the conduct of elections, but contain some shortcomings and deficiencies. This includes a number of inconsistencies which were not addressed, despite recommendations made by the 2002 EU EOM. Although regulations issued by the ECK generally helped to accommodate needs expressed by political parties, they were not always in compliance with the law. The system for the resolution of electoral disputes does not provide sufficient guarantees for redress. The size of constituencies continues to vary significantly, undermining the principle of equal representation of voters.
- The ECK undertook effective technical and logistical preparations, enhanced accessibility to voter registration centres and ensured that polling staff were generally well trained and there was good gender balance. However, lack of consultation in the appointment of Commissioners undermined the confidence of election stakeholders and led to a majority of Commissioners being inexperienced.
- The certification of presidential candidates by the ECK took place over two days on 14 and 15 November 2007 without any problems. However, the nomination processes for the parliamentary and civic elections were seriously marred by irregularities, chaotic administration, interference by party headquarters in individual constituencies and violence in protest against the process and outcome by voters and unsuccessful aspirants and their supporters.
- The campaign was conducted in a fairly open and free environment, in which the freedoms of expression, assembly and association were generally respected. Candidates and parties campaigned intensively, and were mostly able to move freely throughout the country. However, the campaign atmosphere was also characterised by a strong ethno-political polarisation between the two main contenders in the presidential election and their alliances, leading to a generally tense atmosphere in their respective regional stronghold towards the other side. The distribution of money and gifts by candidates was widely reported by

**Kenyan National Commission for Human Rights (KNHCR) and observed by EU observers, a practice inconsistent with democratic principles. The KNCHR also reported widespread abuse of state resources.**

- **During the campaign period, freedom of speech in the media was generally respected. However, on the announcement of the final results for the Presidential election on 30 December 2007 at the Kenyatta International Conference Center (KICC), journalists were ejected from the building. Immediately following the announcement, a Directive from the Internal Security Minister ordered broadcasters to suspend all live broadcasts, seriously infringing the right of the media to report without undue State interference. There were high levels of coverage of the election preparations and the campaign of candidates standing for election. However, a number of monitored media outlets failed to provide equitable coverage for candidates and parties. The Kenya Broadcasting Corporation, in particular, failed to fulfil even its minimal legal obligations as a public service broadcaster set out in the Kenya Broadcasting Corporation Act, its coverage demonstrating a high degree of bias in favour of the Party of National Unity (PNU) coalition.**
- **Despite a vibrant civil society and a proactive KNCHR, the respect of fundamental rights including those for women and minorities still remains generally insufficient. A high number of election related incidents of violence were documented and witnessed throughout the electoral period. A large number of deaths have occurred during the campaign period and following the announcement of the results. In Mount Elgon and the Molo–Kuresoi areas, ethnic and land issue based unrest was further heightened during the campaign period.**
- **Domestic observers, which planned to deploy 16,500 poll watchers for the 27,555 polling stations were, for the first time since 1997, not able to deploy one poll watcher to almost every single polling station. However, their participation was considered important by the election stakeholders and contributed significantly to the transparency of the voting and counting processes at the polling station level.**
- **It is vital in the post election period for the leadership of political parties to take responsibility for keeping the country safe from civil unrest and respecting human rights and demonstrate a commitment to the rule of law. To enable doubts over the accuracy of the presidential results to be clarified, it is vital that an independent investigation is swiftly conducted and the ECK demonstrates maximum transparency in this period. As an essential step, the results of all polling stations must be swiftly published in newspapers and on the internet to enable an independent audit to be undertaken.**

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## Preliminary Findings

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### BACKGROUND

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The 2007 elections were the tenth general elections since independence in 1963 and the fourth general elections since the introduction of multiparty democracy in 1991. While the first two multiparty elections of 1992 and 1997 were characterised by serious flaws and irregularities, including rigging, the subsequent elections of 2002 marked a significant improvement with regard to their administration and competitiveness. The 2007 general elections provided an opportunity to consolidate and further develop the electoral and wider democratic process.

On 27 December 2007, elections were held for the President, 210 Members of the National Assembly<sup>1</sup> and 2,498 members of local authorities. The elections are based on a simple majority, first-past-the-post system, except for the presidential election, where in addition to a simple majority, 25 per cent of the vote in at least five of the eight provinces and election to parliament is needed in order to win the Presidency.

For the 2007 elections, nine parties fielded presidential candidates. The 210 parliamentary seats were contested by a record 117 parties which fielded 2,547 parliamentary candidates. A total of 15,331 candidates competed for the 2,498 civic seats, giving the electorate a broad choice to elect the candidates of their preference.

Kenya has signed and ratified the most prominent international and regional treaties related to human rights, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination and the African Charter on Human and Peoples' Rights, which contain standards relating to the conduct of democratic elections. As a member of the African Union, it has agreed and endorsed the Principles Governing Democratic Elections in Africa encompassed in a 2002 Declaration. These international provisions are binding. Kenya also has commitments to good governance, human rights and the rule of law within the framework of the ACP Partnership Agreement.

### LEGAL FRAMEWORK

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Elections in Kenya are governed by a patchwork of legislation that includes the Constitution of Kenya, eight Acts of Parliament<sup>2</sup> and seven pieces of subsidiary legislation.<sup>3</sup> In the absence of a consolidated electoral act that integrates all relevant provisions related to elections, the legal framework remains characterised by some shortcomings and deficiencies. Despite these

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<sup>1</sup> 12 additional members of the National Assembly are appointed after the election proportionate to the political parties representation in the National Assembly.

<sup>2</sup> National Assembly and Presidential Elections Act (Chapter 7), Local Government Act (Chapter 265), Election Offences Act (Chapter 66), Societies Act (Chapter 108), Registration of Persons Act (Chapter 107), Police Act (Chapter 84), Public Order Act (Chapter 56), Kenya Broadcasting Corporation Act (Chapter 221).

<sup>3</sup> Presidential and Parliamentary Elections Regulations, National Assembly and Presidential Elections Practice Rules (Electoral Code of Conduct), National Assembly and Presidential Elections Regulations (Registration of Electors), National Assembly Elections Rules (Election Petition), Local Government Election Rules, Societies Rules, Registration of Persons Rules,

failings and the non user-friendly nature of the diverse range of applicable laws, they generally provide a workable framework for the conduct of elections.

A number of clear provisions are absent including those stipulating the exact duration of the electoral campaign period and the maximum number of registered voters per polling station. Some aspects of the process are either under-regulated or not regulated at all. There is for instance a lack of specific and adequate arrangements to facilitate voting for voters on duty on election day.<sup>4</sup> Financial accountability structures for the political parties, part of the 2007 Political Parties Bill that has yet to come into force, were covered by a new regulation without being enforced.

Further provisions in the law were open to different interpretations, such as section 5 of the Constitution that stipulates that each political party participating in the election should nominate a presidential candidate. Inconsistencies are also evident in a number of procedural components of the elections and the late publication of regulations to clarify some procedures such as how to process voters with double registration was not fully satisfactory.

The system established for resolution of electoral disputes does not provide a prompt response to complaints, which can only be filed within 28 days after the announcement of the results. The proceedings before the High Court, the body responsible for dealing with election complaints, are cumbersome and it provides limited access due to financial deposits that have to be made by complainants.

## **ELECTION ADMINISTRATION**

The country is divided into eight Provinces, 71 districts, 210 constituencies and 2,498 wards. The elections were administered by the Electoral Commission of Kenya (ECK), a permanent body established by the Constitution to organize all elections and referenda in the country, which appointed 71 district election coordinators, 210 returning officers (one for each constituency) and approximately 245,000 polling staff for the 27,555 polling stations.

Currently the ECK has 22 Commissioners, including a Chairman and vice Chairman. The President acted in line with the Constitution when appointing 19 new ECK Commissioners in the course of the current year. This reduced confidence in the ECK, however, as it was against the Inter Parliamentary Parties Group (IPPG) Agreement of 1997 that requires consultation with the opposition parties when appointing new ECK Commissioners. In addition, most newly appointed Commissioners lacked experience in election administration. The recommendation made by the 2002 EU EOM that the tenure of office of ECK Commissioners should run through to six months after general elections to enhance independence and professionalism of the election authority, was apparently not taken into account. The level of transparency at the local level of the election administration did not always extend to senior decision making bodies at the national level.

Within the resources at its disposal the ECK and its permanent staff were generally able to prepare for the elections both technically and logistically. The distribution and security of sensitive and non-sensitive election materials in preparation for the election day was well executed, although the lack of infrastructure and adverse weather conditions affected

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<sup>4</sup> This includes members of the armed forces, police officers and election officials working in a polling station other than where they are registered.

performance in some remote areas. Election officials that were temporarily employed for the elections were generally well trained and most of them acted impartially and were well aware of polling procedures. With very few exceptions, the vast majority of Returning Officers and their deputies were not serving in the constituency of their origin or residence, which contributed to the perceived impartiality of election officials at polling station level.

All ECK regulations have to be adopted by Parliament, which has repercussions for the independence of the electoral authority. Although regulations adopted by Parliament are legally binding, the ECK issued instructions on 12 December 2007 that were inconsistent with some regulations, such as those which related to assistance to voters, double registered voters and access for voters to vote who were not in the official voter register.<sup>5</sup> The ECK eventually allowed voters to check their names in four different voter lists in each polling station, which heightened the risk of multiple voting. Furthermore, under Article 44 of The Presidential and Parliamentary Elections Regulations, the ECK undertook to make special provisions for voting by patients in hospitals, persons admitted to sanatoria or homes for the aged. Such polling stations were not gazetted and never implemented.

The size and the boundaries of the electoral constituencies for the legislative elections remain an important issue, already raised in previous elections. The 210 single seat constituencies vary greatly in population and size with the least populous constituency having some 12,000 registered voters while the most populous has in excess of 249,000 registered voters. The ECK proposed that for the 2007 elections the number of constituencies should be increased but their proposal was rejected by Parliament. Therefore, the 2007 elections were held with the same constituency boundaries as the 2002 elections thereby maintaining the existing lack of balance that clearly undermines the principle of equal representation of voters.

## **VOTER REGISTRATION**

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The total number of registered voters for the 2007 elections was 14,296,180. According to the ECK, this figure represents an estimated 82 per cent of the total eligible voter population. Under the Constitution, any citizen of Kenya who has attained the age of 18 years, evidenced by either an identity card or Kenyan passport, and has been an ordinarily resident in Kenya for a certain period of time, can register as a voter. A voter can only be registered in one polling/registration centre which is also the place where that voter will cast his or her ballot. In June 2002, amendments to the Constitution permitted the introduction of continuous registration of voters.

A study published by the Institute for Education in Democracy states the ECK did a commendable job in creating and increasing the number of polling stations used as voter registration centres which greatly enhanced people's accessibility to register as voters. However, continuous voter registration, outside the period of voter registration drives, remains a problem as people must travel long distances to the ECK District Election Coordinators' Offices which are mainly situated at the District Headquarters.

There were few complaints reported concerning exclusion or discrimination of particular groups from the voter register. The main issue that affected negatively upon the entire exercise was delay in the issuing of identity cards. The limited resources and extremely

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<sup>5</sup> For example: Some Important Changes Regarding the Functions of the Presiding Officers and Their Deputies and Polling Stations Procedures and Protocols.

bureaucratic organisation of the Registrar of Persons led to serious delays which mostly affected young applicants. However, information collected, including testimonies, indicates that in some cases members of the Muslim and to a lesser extent Hindu and Maasai communities experienced difficulties obtaining national identity cards or passports and therefore were impeded in registering as voters for the 2007 polls.<sup>6</sup> In general the average waiting time for a new identity card was reported to be three months.

The number of cases of double and multiple registrations remains high at nearly half a million entries. According to electoral officials the main reasons for double and multiple registrations are lack of knowledge of voters, the very small number of voters that make an effort to verify their data and transfer of voters to other wards. The problem of deceased voters on the voter register also remains. Due to the lack of reliable information the voter register has not been cleaned of deceased voters. The Registrar of Persons does not have a structural method of removing deceased persons from the register of persons and relies solely on the records from the Registrar of Births and Deaths.

### **CANDIDATE NOMINATION**

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The certification of presidential candidates by the ECK took place over a two day period on 14 and 15 November 2007 without any problems. Of 16 aspirants presenting their nomination papers nine candidates were cleared by the ECK. However, the nomination processes for the parliamentary and civic elections were seriously marred by irregularities, chaotic administration and interference by the party headquarters in individual constituencies. There were subsequent outbreaks of violence in protest against both the process itself and the outcome of the nominations, by voters and unsuccessful aspirants and their supporters.

The nominations were particularly strongly contested in the respective strongholds of the two main presidential candidates as aspirants expected nomination on the presidential candidate's party-ticket in the respective areas to almost guarantee election to parliament. Several cases were reported in which the ECK, upon request by PNU, became involved in the organisation of the PNU primaries in such constituencies as Westlands, Kiharu, Lari, Malindi, Kaloleni, Granze, Bahari, Nyandarua, Laikipia and all constituencies in Nyeri District except for Makur'weini. Initially the ECK requested political parties to submit candidate lists five days prior to the nomination dates on 23 and 24 November 2007, but rescinded this requirement after consultation with the political parties. Many aspirants who originally attempted, but failed to receive nomination by one of the main parties, opted for nomination through smaller parties.

For the first time since the reintroduction of the multiparty system, none of the political parties were able to field candidates in all 210 constituencies. ODM fielded the most candidates with 190, followed by KENDA, 170 candidates, PNU 135 candidates and ODM-Kenya (ODM-K) with 130 candidates. With 2,547 aspirants the number of parliamentary candidates was more than doubled compared to the 2002 elections. Almost all EU EOM interlocutors from political parties, civil society, faith-based organisations and citizens of Kenya considered the high number of candidates to be a result of the huge increase in the remunerations paid to Members of Parliament.

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<sup>6</sup> The introduction of a vetting mechanism, to ensure that nationality requirements are respected, has led to even longer delays. Hindu and Muslim groups also claim they were asked to pay bribes in order to get national identification documents. Cases were observed in Busia, Kisii and Wajir districts.

## **CAMPAIGN ENVIRONMENT**

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Campaigning by the main presidential candidates started several months before the campaign period defined by the ECK “order of events”. The campaign was generally conducted in an open and free environment, in which the freedoms of expression, assembly and association were widely respected. Candidates and parties campaigned intensively, and were generally able to move freely throughout the country without restriction or interference. However, the campaign atmosphere was also characterised by a strong ethnic-political polarisation between the two main contenders in the presidential election and their alliances, leading to a tense atmosphere in their respective regional strongholds towards the other side. This resulted in both sides avoiding campaigning in the strongholds of their opponent in order to avoid hostile receptions and embarrassingly low turnouts at rallies and to concentrate their resources in the closely contested areas. Towards the end of the campaign unsubstantiated allegations of organised manipulation and rigging increased tensions even further. Major rallies took place when the three main presidential candidates visited an area. They were usually accompanied by the parliamentary and civic candidates of the area.

Parliamentary and civic campaigns were mainly conducted through smaller and improvised stopovers at market places, door-to-door-campaigns and sometimes smaller rallies. Fierce competition between parliamentary candidates of the same alliance took place in some areas. This was particularly so in Central, Western and Nyanza Provinces, as in these areas parliamentary candidates had the greatest chance of winning because of their association with the strongest presidential candidate. The constituency based Peace Committees were able to mediate conflicts in some places. These Committees, however, lacked important mechanisms to enforce solutions to conflict on the contestants, and in situations where candidates were unwilling to cooperate, their impact was limited. This was the case in many places that experienced intense and aggressive campaigning, especially in Western and Nyanza Provinces where some contests were involved in violence that resulted in the death of several people.

In a positive development and in an attempt to reduce the potential for violence, co-ordination between the police and political parties helped ensure candidates and parties were not campaigning in the same area on the same day. Initial disputes about the use of venues by the major candidates, for example in Nairobi and Eldoret, were resolved through consensus by the campaign teams of the candidates and the police ahead of the events. However, clashes between supporters of different parties occurred in several parts of the country resulting in the reported deaths of 22 people during the campaign period of the EU EOM. Furthermore, ethnic tension intensified during the election period in the Mount Elgon region of Western Province and in Kuresoi constituency in Rift Valley Province and led to ethnically based clashes with several thousand people being displaced from their homes and reportedly 12 people being killed during the deployment period of the EU EOM. These incidents are incompatible with genuine democratic elections.

Distribution of money and goods by candidates was common practice which was widely observed by EU observers and reported by the media and the Kenya National Commission on Human Rights (KNCHR). This practice appears to be deeply entrenched in the political culture of the country but is incompatible with international standards for campaigning in a democratic society.



The presidential campaign was dominated by the controversy about the system of government. While ODM, building on the Bomas Draft constitution, campaigned strongly for a devolved system of government, PNU promoted the existing centralised system. An open, enlightened debate about the different concepts was blurred as both ODM and PNU used the term Majimbo (Swahili for region) as a label for a devolved system. They thus played with the hopes and fears of many Kenyans as the term carries historically positive connotations in some parts of the country and negative ones in other parts. In general, the propagandist use of the term by both sides furthered the ethnic political divide during the campaign.

The signing of a Memorandum of Understanding between ODM and the National Muslim Leaders Forum at the end of August 2007 proved to be highly controversial. Initially the document was not made public. While it contained a pledge of mutual support for special development in the Coast region under an Odinga presidency, fake versions were circulated that suggested the introduction of elements of Sharia law in Kenya which provoked inter religious-ethnic concerns.

In breach of the Electoral Code of Conduct and in violation of the Public Officers Ethics Act, state resources were widely used during the campaign to the advantage of the incumbent party. The KNCHR reported 141 cases of use of government vehicles, two cases of use of government helicopters and the involvement of public servants, heads of parastatals and the provincial administration in campaigning activities.<sup>7</sup> In addition President Mwai Kibaki used his presidential powers for campaign purposes when he announced the creation of a substantial number of new districts during campaign rallies.

## **MEDIA ENVIRONMENT**

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During the campaign period freedom of speech in the media was generally respected.<sup>8</sup> However, on the announcement of the final results for the Presidential election at the KICC on 30 December 2007, journalists were ejected from the building. Immediately following the announcement, a Directive from the Internal Security Minister ordered broadcasters to suspend all live broadcasts, seriously infringing the right of the media to report without undue State interference.

There were high levels of media coverage of candidates and parties standing for election, as well as election preparations, throughout the monitoring period. However, a number of radio and television broadcasters monitored failed to provide equitable coverage for candidates and parties.<sup>9</sup> The Kenya Broadcasting Corporation (KBC), in particular, failed to fulfil even its minimal legal obligations as a public service broadcaster set out in the Kenya Broadcasting

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<sup>7</sup> 'Still Behaving Badly' published December 2007.

<sup>8</sup> ICCPR, Article 19. There was one exception during the campaign period when journalists had their footage and photographs confiscated by the security services after an incident at State House involving the First Lady. A complaint was lodged by NMG over the incident to the Media Council, though no further action has as yet been taken on this matter.

<sup>9</sup> The sample of television channels monitored between 22 November- 27 December 2007 was: the state owned television channel KBC-TV and the commercial channels KTN-TV, Nation TV and Citizen TV (18:00-24:00 hours). The state owned radio channels of KBC: KBC Kiswahili and KBC English; the commercial radio stations Kiss FM, Citizen FM and Easy FM and seven vernacular language radio stations: Egessa, Inooro, Kass, Kameme, Mulembe, Musyi and Ramogi. All of these radio stations were monitored between 06:00-09:05 hours and 17:00-22:05 hours. The newspapers monitored were the *Daily Nation*, the *Standard*, the *People Daily* and the *Kenya Times*.

Corporation Act, the IPPG agreement 1997 and international and regional standards.<sup>10</sup> KBC Radio's English and Swahili language services demonstrated a high level of bias and granted a combined total of 76 per cent of coverage to the PNU coalition partners.<sup>11</sup> ODM received 13 per cent and ODM-K 5 per cent with the remaining 6 per cent allocated to a range of parties. KBC-TV's coverage demonstrated a similarly excessively high amount of coverage of the PNU coalition: PNU received 71 per cent share of coverage of political actors with ODM receiving 11 per cent and ODM-K 5 per cent. The allocation of free airtime on KBC to registered political parties standing for election, pursuant to Part 3, Section 8 (1k) of the Kenya Broadcasting Corporation Act, was also not implemented by the KBC and the ECK and both institutions clearly failed to fulfil this key legal provision.

The commercial radio stations provided some degree of diversity between the main political parties though the PNU coalition partners enjoyed the majority of coverage. Excluding paid for political advertising, Citizen FM granted 45 per cent of its coverage of political actors to the parties of the PNU coalition. ODM received 29 per cent and ODM-K 12 per cent share of coverage. Similar imbalance also characterised Easy FM's coverage and the PNU coalition received 52 per cent share, ODM 34 per cent and ODM-K 12 per cent share of coverage on this station. Kiss FM provided a greater degree of balance in their coverage of political parties. The PNU coalition and ODM received almost equal coverage: 44 and 43 per cent respectively. The commercial television channels, KTN and NTV's coverage demonstrated similar trends. The PNU coalition received 46 and 50 per cent share of coverage on the respective channels. ODM received 39 per cent share of coverage on KTN and 28 per cent share on NTV. ODM-K was afforded 12 per cent share of coverage on KTN and 17 per cent on NTV. Citizen TV granted the PNU coalition partners 56 per cent share of coverage and ODM 29 per cent with ODM-K receiving 11 per cent share. The vernacular radio stations' coverage demonstrated a tendency to grant greater access to the parties and candidates with close links to the tribal and political affiliations of their listeners with few of these stations providing adequate balance in their coverage.

Newspaper coverage demonstrated a constant trend across all of the titles monitored. In the *Daily Nation* the PNU coalition received 54 per cent share of coverage compared with 53 per cent in the *Kenya Times*, 55 per cent in the *Standard* and 56 per cent in the *People*. ODM received 29 per cent in the *Daily Nation*, 33 per cent in the *Kenya Times*, 30 per cent in the *Standard* and 28 per cent in the *People*. ODM-K received a 12 share of coverage in the *Daily Nation*, 8 per cent Kenya Times, 10 per cent in the *Standard* and 5 per cent in the *People*.

The lack of clear regulations relating to paid for political advertising also led to inconsistency in the application of standards in this area. All of the major media groups refused, or edited to ensure they met legal requirements, a number of political advertisements, but this was not always carried out in uniformity between the political parties. There was a high volume of paid for advertisements on radio and television stations. PNU invested heavily in this area and its political advertising represented 74 percent of political advertising compared with ODM advertising which represented 20 percent share.

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<sup>10</sup> Chapter 7, Article 17 (3) African Charter on Democracy, Elections and Governance stipulates that "State Parties shall..... ensure fair and equitable access by contesting parties and candidates to state controlled media during elections."

<sup>11</sup> All data excludes paid for political advertisements. The percentage data includes all parties who received coverage. As most of the parties outside the three largest ones received below 1 per cent share of coverage they have not been listed in the analysis above. Data charts including coverage of all parties are accessible on the EU EOM website: [www.eueomkenya.org](http://www.eueomkenya.org)

## **HUMAN RIGHTS**

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Kenya has a vibrant civil society and a proactive Kenyan National Commission on Human Rights. These groups play an important role in monitoring human rights. Despite this, the respect for fundamental rights, including those for women and minorities, still remains generally insufficient. A high number of election related incidents of violence were documented and witnessed throughout the electoral period, including a significant number of killings.<sup>12</sup> In most cases, abuses did not receive an appropriate response from the police and the judiciary and there was therefore impunity towards perpetrators. Candidates were also observed using hate speech on a limited number of occasions. The circulation of inflammatory mobile telephone text messages and emails, with no apparent attempts from the authorities to establish their origins, also acted to increase ethnic divisions.

Kenyan law guarantees non discrimination on any grounds in line with international legal standards.<sup>13</sup> However, minorities have experienced various obstacles in their access to political institutions and public administration. Ethnic and religious minorities have been underrepresented in public affairs. In this respect, improvements in legislation protecting against discrimination by political parties have not yet been implemented.<sup>14</sup>

Even though there is a lack of provisions for quotas for the minimum representation of women candidates or reserved seats for women in Parliament,<sup>15</sup> women represented a total of 9.6 per cent of civic candidates, 10.2 per cent of parliamentary candidates and one out of nine presidential candidates. This is an improvement compared to previous elections but remains low when compared to regional and international standards for elections.<sup>16</sup> Furthermore, the majority of women candidates were affiliated with smaller political parties after failing to secure nomination in the larger political parties during the nomination process thus reducing their prospects of election.<sup>17</sup> The social and economic situation, cultural pressures, combined with internal political party structures remain serious impediments to the participation of women in politics and public affairs. Women were, however, well represented in the voting population and in the electoral administration, although there was a lack of female participation on the Peace Committees.<sup>18</sup>

There were numerous public statements against violence, and gender based violence in particular, by the ECK, churches, civil society organisations and political parties. However, during the nomination and election campaign periods there were a significant number of violent assaults on women. Thirty cases were observed or reported, including intimidation,

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<sup>12</sup> 190 cases were observed or reported, from intimidation to murder, most of them having occurred in Rift Valley, Nyanza and Western Provinces.

<sup>13</sup> In addition to international conventions against discrimination, Article 82 of the Constitution guarantees non discrimination by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex.

<sup>14</sup> The Electoral Code of Conduct (Article 6f), states that political parties should “avoid discrimination,” the Political Party Act 2007, which has yet to come into force, however, provides for non registration and cancellation of registration of political parties on the basis of discrimination (Articles 6, 16 and 18).

<sup>15</sup> A bill allocating 50 parliamentary seats for women was rejected on 15 August 2007 by the Ninth Parliament.

<sup>16</sup> 1,478 women out of a total of 15,332 candidates stood for the civic elections and 269 out of 2,548 for parliamentary seats.

<sup>17</sup> 58 women out of the 269 parliamentary candidates ran with a ticket from the main parties, amounting to approximately one fifth of female candidates standing for the parliamentary elections.

<sup>18</sup> Most groups with member represented on the Peace Committees were male dominated and this imbalance in gender was reflected in the Peace Committees themselves.

physical assaults, threats, and the murder of one ODM aspirant on 1 December 2007. Although armed escorts were provided, when requested, for some women candidates during the last weeks of the campaign, a general climate of fear and intimidation restricted the political activities of women.

The increase in violence in the second half of 2007 in the Mount Elgon and more recently in the Kuresoi areas involving heavy clashes between ethnic groups and the displacement of people seriously restricted the electoral process. These conflicts resulted in 200 deaths and the displacement of an estimated 46,000 people<sup>19</sup> in Mount Elgon in 2007, and about 30 deaths and up to 20,000 people<sup>20</sup> displaced to Molo from Kuresoi over recent months undermining the human rights situation in the area in the absence of an adequate security environment. This resurgence of election related violence, coupled with a background of ethnically based unrest, interconnected with land allocation issues, highlighted the deep-seated mistrust between communities. Allegations by civil society, churches and displaced persons of involvement of candidates in these conflicts raised concern about their commitment to democratic competition. The late establishment of temporary polling stations immediately prior to election day by the ECK around internally displaced persons' settlements allowed the organisation of the polls for IDPs.

## **CIVIL SOCIETY**

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Kenya has a well developed and diverse civil society that performs the role of a public watchdog on several levels with regard to many key issues. Since the 2002 elections, the sector has undergone a transformation as a considerable number of its leading and technical staff took up positions in the new government. This however did not impede its watchdog role indicating a high level of institutional capacity. A number of organisations played an essential role in the elections, scrutinising key aspects of the process such as the use of state resources, candidate and party finances and drawing public attention to violence and ethnic displacements in parts of the country.

With regard to election observation, Kenya has a longstanding history of effective observation since 1992. In 2007, 13 civil society organisations and faith based organisations, representative of the three main faiths of the country, constituted the Kenya Domestic Observation Forum (KEDOF). This was funded with 2 million US dollars through the UNDP Donor Basket Fund, an amount around 0.5 million US dollars short of the funding provided in 2002. With 16,500 poll watchers planned for the 27,555 polling stations the domestic observer group was, for the first time since 1997, not able to deploy one poll watcher to almost every single polling station. Equally worrying were the long standing internal disputes amongst the 13 organisations that hampered the establishment of the KEDOF secretariat and the working structure of the organisation, thereby endangering the success of the entire programme. However, this contribution is still considered important by election stakeholders and contributed significantly to the transparency of the voting and counting processes.

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<sup>19</sup> Reports of the Kenyan Red Cross.

<sup>20</sup> Reports of the Kenyan Red Cross.

## **POLLING**

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The EU EOM observed a total of 752 polling stations on election day. Apart from a few isolated incidents, voting and counting was conducted in a peaceful and violence free atmosphere. The ECK had made a commitment to recruit a high number of female staff to serve in the polling stations and delivered on this commitment by achieving near gender parity. Women were found to be presiding or serving as deputy presiding officers in 48 per cent of polling stations visited.

The full complement of ECK polling station staff was generally present at the opening of polling stations visited. There were very few reported cases of missing polling staff during the day and those who were absent were replaced very quickly by the ECK. In spite of the sometimes difficult field conditions and the increase in the number of polling centres since 2002, all materials required for the conduct of the poll were available at the polling stations visited by EU observers. However, the length of the opening procedure, especially the additional sealing of the ballot boxes by candidate agents, some cases of late delivery of materials and errors in the voters' registers lead to late openings in 30 per cent of cases observed. In Nairobi, specifically, this created some tension among voters who had already been patiently and peacefully queuing for many hours. The ECK found adequate solutions to these shortcomings. Presiding Officers, in those polling centres which opened late, consequently extended the opening hours and voters were able to cast their ballot.

Polling was generally conducted in an orderly manner. The ECK polling staff proved to be committed and generally well trained. However, several aspects of the polling procedures such as checking of the voters' hand for ink and reading out loudly the voters' name were not implemented with sufficient rigour, or were often ignored, such as the regulations pertaining to assisted voters. Cases were observed where the Presiding Officers, Deputy Presiding Officers and candidate agents actively and systematically assisted voters in casting their ballot, intentionally or unintentionally breaching the secrecy of the vote. Observers reported that up to 90 per cent of voters were assisted in some rural polling stations. The absence of adequate layout in many polling stations visited, combined with the lack of enforcement of the official ECK regulations regarding assistance given to voters, led to the emergence of cases of intentional breaches of the secrecy of the vote in 16 per cent of polling stations visited, group voting in 8 per cent and proxy voting in 5 per cent of polling stations visited.

New instructions issued by the ECK, which differed from original regulations, allowed double registered voters to cast their ballot. Consequently, polling stations had up to four different voter lists: lists organised in alphabetical order, lists organised by identity card numbers, lists with double registered voters and original black book handwritten lists. Any voter, whose name was not found in the list that was organised in alphabetical order, but included in any of the other three lists, could vote if not registered more than twice. The existence of multiple voting lists increased the risk of multiple voting.

Turnouts higher than 90 per cent were observed in a number of polling stations, namely in Central and Eastern Province. In Maragwa, ECK officials informed EU EOM observers that there were some doubts regarding the high turnout.

Candidate agents were present in nearly all polling stations visited, often in high numbers. However, EU observers reported a tendency of over-representation by PNU or ODM agents

in the strongholds of these two parties Domestic observers from various groups were present in 61 per cent of polling stations visited, achieving a good coverage of polling stations nationwide but with significant variations from one constituency to another.

EU EOM observers were generally welcomed by voters, party agents and election officials at the polling stations. At the tallying centres as well as at ECK headquarters in Nairobi, however, they encountered problems of access and information.

### **COUNTING AND TALLYING**

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As a consequence of polling hours being extended to compensate for delayed opening, counting started late in a significant number of polling stations and, given the number of ballots to be counted for the three elections, continued well into the night and in the case of several polling stations in Nairobi until the morning of 28 December 2007.

In a large number, almost a third, of polling stations visited, party agents were not given a copy of the result sheets, either because the form was not available or they did not request a copy. Furthermore, in more than a third of polling stations visited, the results were not posted at the polling station level fundamentally undermining transparency measures in the process. The aggregation of results in the tally centres was delayed and also lacked transparency in many constituencies. EU observers noted variations in the procedures used in some of these centres, depending largely on time and logistical constraints. The combination of the lack of transparency and variations in procedures meant that the observation role played by local party agents and observers was restricted in this part of the election process.

In Central Province, the majority of EU EOM observer teams experienced difficulties in obtaining the results for each polling station from Returning Officers during the tally process. In several constituencies including Mathioya, Kaloleni, Mvita, Kisauni, Changamwe, Likoni and Central/North Imenti, the Returning Officers refused to provide constituency results to EU EOM observers before these results were confirmed in Nairobi. The constituency results form in Kangema showed to EU EOM observers was only signed by a party agent of PNU. A number of party agents reported that they were refused copies of result forms. Furthermore, according to the ECK Chairman, some Returning Officers were reported to have disappeared after completion of the tallying process in their constituencies.

A lack of adequate transparency and security measures in the process of relaying the results from local to national level questioned the integrity of the final results. In this respect, the tally process at central level suffered from a critical absence of detailed procedures for the compilation of results at the central level and combined with a lack of transparency throughout this process undermined the confidence in the process and subsequently the results.

Party agents and domestic and EU EOM observers, were not initially permitted to enter the results centre at KICC, and only later after a reversal of the ECK's original decision to release the results without full participation of observers and agents, did they permit them to attend the release of results. This access was intermittent. Whilst the result of the elections were announced, the official figures for all the constituencies are still not available and adequate measures have not been taken at all levels to ensure the results can be correlated in the public domain. On the announcement of the final result chaotic scenes with party

**EU Election Observation Mission  
Kenya, 27 December 2007, General Elections**

members challenging the results being announced led to the ejection of observers and other accredited groups.

Serious inconsistencies and anomalies were identified in the results announced by the ECK. For example, in Molo and Kieni, there were significant differences between presidential election results reported by EU EOM observers at the constituency level and results announced by the ECK at national level. Additionally, at the ECK headquarters, the EU EOM Chief Observer was shown forms on which the election results for constituencies 205 (Lari) and 096 (Kandara) had been changed. It was unclear, by whom, where, and especially when these changes were made. It was therefore not possible to verify whether the signature of the party agents was included before or after the changes. Furthermore, for Kerugoya, EU observers reported a discrepancy of more than 10, 000 votes in the official turnout given for Presidential and Legislative elections.

The EU EOM will continue to observe the completion of the entire electoral process.

The EU EOM wishes to express its appreciation to the Government of the Republic of Kenya and the Electoral Commission of Kenya for their cooperation and assistance in the course of the observation. The EU EOM is also grateful to the Delegation of the European Commission in Kenya and to International Organisation for Migration (IOM) for their support throughout.

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