

INTERGOVERNMENTAL AUTHORITY ON DEVELOPMENT



REFERENDUM OBSERVER MISSION TO KENYA INTERIM REPORT, NAIROBI 6TH AUGUST 2010

1. Introduction

Following the invitation by the Interim Independent Electoral Commission (IIEC) of the Republic of Kenya, the Intergovernmental Authority on Development (IGAD) sent a Referendum Observer Mission (OEM) to observe the referendum of 4th August 2010. This is the interim report of the IGAD mission which arrived in Nairobi on 1th August 2010. The Mission observed the polling process from 2nd August 2010 to 5th August 2010.

IGAD is a regional body with membership of Djibouti, Eritrea, Ethiopia, Kenya, Sudan, Uganda and Somalia whose mandate includes the promotion of Good Governance, Democracy, Free and Fair elections and promotion of peace and security in the region.

IGAD is supportive of the processes undertaken to enhance democracy and entrench peace and stability following the violence that erupted after the 2007 General elections in Kenya.

Objectives of the Mission:

- To assess whether there were favorable conditions for the conduct of referendum that would allow the people of Kenya to freely express their will;
- Assess and determine whether the referendum was conducted in accordance with the constitution, legal and institutional framework of Kenya;
- Determine whether the final results of the process as a whole reflect the wishes of the people of Kenya and;

- Assess whether the referendum met international benchmarks set out in the African Union Declarations on the principles governing democratic processes in Africa (African Charter on Democracy, Election and Governance) and the Declaration of principles for international observers adopted by the UN in October 2005.

2. Mission Composition

This mission was composed of 17 observers from Member States led by Ambassador Abuzeid El Hassan, a distinguished and long standing African diplomat and currently the Head of IGAD Liaison office to the African Union.

3. Deployment

The mission was deployed in 7 locations in 6 provinces in the country that include: Nairobi, Coast, Rift Valley, Western, Nyanza and Central. The Deployment started on 2nd August 2010 and the mission completed its assignment on 5th August 2010.

4. Method of Work

- The Mission was selected from a pool of trained IGAD observers from all the IGAD Member States and the Secretariat.
- Several briefings were done as part of the preparations. Part of the briefing was delivered to the team by the Chairman of the IIEC and his commissioners and staff at the Bomas of Kenya National tallying Center.
- The Mission consulted with observers from the Commonwealth Secretariat, local organizations and other stakeholders
- Reports from the field were transmitted to the IGAD Liaison office in Nairobi by the observers.

5. Assessment Tools

An assessment tool and a check list that conforms to international observation standards which had earlier been developed by IGAD, was used.

6. Findings of the Mission

i) Legal and Regulatory Framework

The main instrument regulating the conduct of referendum in the Kenya includes the Constitution of Kenya, the Constitution of Kenya Review Act No. 9 of 2008 and The National Accord and Reconciliation Act, 2008.

It is the Mission's observation that the existing legal and regulatory framework in the Kenya is generally conducive for holding of credible referendum. It is also the Mission's observation that the referendum was conducted in accordance with the existing legal system.

ii) Electoral Authority

The Mission noted that according to the provisions of the Constitution on the appointments of the Commissioners to the IIEC, the Commissioners are appointed by the President of the Republic after approval by the members of the National Assembly taking into consideration regional representation. This provision does not provide an opening for unilateral appointments to the Commission giving the commissioners legitimacy having been appointed through an open process of checks and balances.

The IGAD Mission is gratified that the Kenya Authorities undertook reforms in broadening stakeholder participation in election management which took into consideration the inclusion of women and the civil society groups.

iii) Campaign Process

The IGAD Mission was short term and had therefore no opportunity to observe the campaign process. We would therefore not make any observations in this respect.

iv) Registration of Voters and voters Roll

The mission did not observe the voter registration exercise but learnt that following the disbandment of the previous Electoral Commission of Kenya (ECK), IIEC had been tasked and had successfully conducted the re-registration of eligible voters, registering more than 12.5 million voters.

v) The Voting Process

The IGAD mission observed that procedures followed at all level which include; opening, vote casting, closing, tallying and counting processes were very clear, largely orderly, transparent and quick. IIEC Officers in polling stations visited by the IGAD team were well organized and able to discharge their duties properly. The essence of secret ballot was observed in the vast majority of polling stations

vi) The Counting Process

The Mission observed the counting process. Although it started on a slow pace, the same picked up as time went on and no incidents of disruption were observed. The counting process was very transparent and both the polling officials and agents agreed on the figures. Generally the counting was done efficiently and security was sufficient to ensure that the ballots were transferred from the polling stations to the tallying centers in a secure manner.

Conclusion

Taking into account that the entire process, the historical background, the circumstances under which the referendum was carried out, and the relevant international principles , our preliminary assessment is that the referendum process generally fulfills internationally acceptable standards and credible, free and fair.

The IGAD Mission congratulates and encourages the IIEC to continue demonstrating transparency with the view to addressing genuine complaints and technical hitches that may have been witnessed.

In April 2010, IGAD observed the election process in Sudan and has now observed the referendum in Kenya. The lessons learned from both processes shall be used to enhance the democratic processes in the IGAD region

The IGAD secretariat has followed and will continue to follow and support the reform agenda in Kenya of which a new constitutional order is pillar, and will continue to closely follow the outstanding aspects of the reform process in order to evaluate the post referendum phase and produce a more comprehensive and detailed account of the entire referendum process in a final report. The final report will contain recommendations to consolidate Democracy and Good Governance in Kenya to further support of the reform process.

We commend the Kenyan people for the very high participation of all people across all ages in the whole process. We particularly noted and commend the high participation of the youth in the referendum.

IGAD extends its deepest gratitude and appreciation to the people of the Kenya for the warm welcome and hospitality accorded to the mission.

Thank you.

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