



## INTERIM STATEMENT

# **Recommendations for the Re-Run Based on Findings Since the 8 August Election Day**

**Nairobi, 14 September 2017**

The EU Election Observation Mission (EU EOM) has been invited to observe the entire electoral process in Kenya, including the re-run of the presidential election ordered by the Supreme Court on 1 September. In this interim statement we are concluding our observation of the 8 August elections and are sharing our recommendations for future elections, in this case the scheduled 17 October re-run. Making recommendations is a key part of all EU election observation work. These are offered to Kenyan stakeholders for consideration, and publicized in the interest of transparency, with the aim of increasing electoral integrity and improving the overall process.

As with every electoral observation mission the EU conducts, we are committed to impartiality and independence, and bound by the EU's methodology.<sup>1</sup> We do not favour any particular outcome, and work to support the fulfilment of citizens' political rights. Our mandate is to contribute to the integrity of the election through scrutinizing the entire electoral process, comparing how practice meets Kenya's constitutional and other legal requirements, commenting on issues when there is supporting evidence, and making recommendations for future elections. The EU EOM was deployed at the invitation of Kenyan authorities, and is committed to serving the people of Kenya.

The EU EOM to Kenya 2017 issued a Preliminary Statement on 10 August, two days after polling, in which we presented findings up to and including the counting of ballots.<sup>2</sup> Based on these findings, and also later observation of tallying and analysis of available results forms, a number of areas for improvement have been identified below for the re-run.

The re-run requires the Independent Electoral and Boundaries Commission (IEBC), political parties and others to make improvements to the electoral process. The EOM also seeks to improve the clarity of its communication, and may therefore release its next Preliminary Statement at a different time than is typical practice, in order to reflect its initial observations of the tallying process.

The Supreme Court's full judgment has yet to be published, but its ruling has demonstrated its independence and shown the importance of elections being conducted according to the Constitution and the law related to elections (regardless of the outcome). We will look into the details of the Supreme Court's argumentation and assess the implications.

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<sup>1</sup> For more information see [https://eeas.europa.eu/topics/election-observation-missions-eueoms/421/election-observation-missions-eueoms\\_en](https://eeas.europa.eu/topics/election-observation-missions-eueoms/421/election-observation-missions-eueoms_en)

<sup>2</sup> The EU EOM Preliminary Statement is available at: [https://eeas.europa.eu/election-observation-missions/eom-kenya-2017/30948/preliminary-statement-eu-eom-general-elections-kenya\\_en](https://eeas.europa.eu/election-observation-missions/eom-kenya-2017/30948/preliminary-statement-eu-eom-general-elections-kenya_en)

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**18 recommendations are listed below for consideration by national stakeholders.**

For the IEBC:

**1. *Adopt policies and plans for 1) timely reform actions for the re-run 2) regular and meaningful stakeholder consultation and 3) frequent comprehensive public communication***

IEBC reform actions are essential for demonstrating compliance with the constitutional requirements for the electoral process to be “*simple, accurate, verifiable, secure, accountable and transparent*”.<sup>3</sup> Stronger substantial compliance with these principles needs to be planned and agreed with stakeholders and demonstrated to the public. This is necessary for raising confidence in the electoral process and the wider democratic system.

The EU EOM noted in its Preliminary Statement that “*Despite its efforts, including in mainstream and social media, the IEBC’s communication lacked structure, consistency and depth at times.*” Also that “*sufficient mechanisms for routine stakeholder consultation has been lacking.*”<sup>4</sup> Consultation provides for increased generation of ideas and stronger stakeholder commitment to the process. Public communication allows stakeholders to understand the process, including any difficulties, thereby reducing the risk of challenges and disputes.

**2. *Develop more detailed and transparent procedures for the counting, tallying and results transmission processes (including scanning and the “complementary mechanisms” to be used in case of technology failure). Make these publicly available ahead of the election, and train staff accordingly with clear, unequivocal written instructions***

The EU EOM noted in its Preliminary Statement that “*voting procedures were generally well implemented*”. However it also noted “*there was a delay in development of final procedures for the high technology aspects of the election. Biometric voter identification and electronic results transmission, as well as some procedures, lacked detail. The needed procedures were for the most part only provided after training had started and manuals had been printed.*” The need for clear complementary mechanisms in case of technology failure is also evident.

The EU EOM examined a sample of 1,558 randomly selected scanned polling station results forms (34As) from 82 constituencies (up to a maximum of 20 per constituency covered by EU EOM long-term observers). This showed that further adjustments and/or training is needed on scan quality. In 18% of the EU EOM sample, the forms were only partially readable and in 5%, the forms were not readable at all. Some difficulties in completing forms were also evident, for both polling station results (form 34A) and constituency tallies (form 34B). In the sample examined there were some signs of mathematical anomalies in 2.3% of cases, altered figures of some sort in 3%, and missing data in 3%. Overall, 1% of sampled 34As were not signed by presiding officers. In the transcribing of polling station results onto constituency tally sheets (34Bs), small differences in numbers were found in some cases. In the forms examined there was little variation in the patterns of anomalies/errors between strongholds/swing constituencies, and no obvious advantage to one camp or another.

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<sup>3</sup> Constitution of Kenya, article 86(a).

<sup>4</sup> The Constitution of Kenya makes various references to public participation. Related international commitments include: “*Each State Party shall take appropriate measures... to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption*”. Convention against Corruption (CAC) article 13.

**3. *Improve the results transmission software and network selection provision, so that 34A polling station results forms are reliably sent through the KIEMS***

Some 30,000 scanned 34A forms out of 40,883 were transmitted on election night using the KIEMS, and were published on 9 August on a public portal.<sup>5</sup> The remaining 34As could not be transmitted from polling stations, principally for reasons of network coverage and configuration of the results transmission software.<sup>6</sup> EU EOM observers noted that sometimes “*KIEMS were not operational for transmission of results*”.<sup>7</sup> This, and a lack of subsequent efficiency in sending 34A scans, resulted in polling station results not being available online for checking by all stakeholders until after the petitions process (see below). While in principle contestants had access to results at lower levels through their agents, the lack of availability of detailed results at the national level compromised independent scrutiny and intensified mistrust of the process. Therefore, a review of network coverage options and alternative transmission options such as the planned use of satellite phones, as well as software configuration, is warranted to provide for 34As being sent from KIEMS from polling stations where possible, and if not, then from constituency tallying centres.

**4. *Arrange for constituency tallying centres to project and display the real-time entering of data on to 34B forms by ICT clerks, so that all agents and observers can see what exactly is being tallied***

EU EOM observers noted that generally observers and agents had a clear view at tallying centres and were able to scrutinize the overall process freely. However, due to limited space, party agents were not always close enough to ICT clerks to be able to follow the data entry of 34A polling station results forms onto tabulation tables under the supervision of ROs. The planned projections did not always take place as planned, and when they were working, rather than showing the tallying of the actual constituency results (based on the 34A forms) only the keyed-in results were shown.

**5. *Standardize constituency results forms used (34Bs), complete with security features, and take necessary measures for their consistent and accurate use by Returning Officers***

EU EOM observers noted that 34B forms were not standardized, with some forms (or sub-pages) printed on plain paper rather than the paper with dedicated security features. There was also a lack of consistency of format for the tabulation tables used. Of the 290 34B forms examined in the days immediately after they were made available online, 20 were found without the RO’s name recorded and 5 had no RO signature. In keeping with the scrutiny report of the Supreme Court registrar, the EU EOM noted that in the majority of forms the “*handover*” section recording the number of 34A forms received had not been completed.

Some changes in uploaded 34B forms were noted. However from the sample looked at by the EU EOM, alterations were seen to be essentially a change in format of the form or scan rather than a

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<sup>5</sup> <https://forms.iebc.or.ke>.

<sup>6</sup> The KIEMS results transmission software was designed so that, for the presidential results, the “*send*” button could only be used when the results had been keyed-in and the scanned 34A form had been uploaded. However in case of poor network coverage, the system in fact gave a prompt question on whether the presiding officer would like to send the keyed-in results without the form. Accepting this then precluded the subsequent sending of the 34A form, since the transmission could only be undertaken once for each election.

<sup>7</sup> EU EOM Preliminary Statement. The Elections Act states that for presidential elections the IEBC shall “*electronically transmit, in the prescribed form, the tabulated results of an election for the President from a polling station to the constituency tallying centre and to the national tallying centre.*” Section 39(1c).

change in content.<sup>8</sup> These irregularities generated suspicion that forms were not controlled and may have been subject to manipulation.

**6. Ensure that all form 34Bs and 34As are published on the IEBC website promptly to allow time for checking and preparation of possible petitions. Account for any updates of scans, with time stamps and original copies kept available on the portal**

All results forms should be available to parties, candidates and agents at constituency tallying centres to allow cross-checking of constituency results to be undertaken on the spot. This checking is particularly important given that declared constituency results are final and cannot be changed (except through a court petition). Online availability of all forms facilitates overall checking and extends access to a broader range of stakeholders. It is also legally required, albeit without specified time limits.<sup>9</sup> For future elections the deadlines for presidential petitions could be revised to allow more time for checking results forms, recounts or audits, thereby strengthening access to remedy.<sup>10</sup> At a minimum, the immediate online availability of all 34B forms (which include a breakdown by polling station) at the time of the results declaration will facilitate stakeholder checking and subsequent confidence in the announced result.

The EU EOM was concerned at the lack of availability online of any scanned 34B forms and the lack of further progress with uploading the outstanding nearly 11,000 scanned 34A forms. The shortcoming in uploading of results forms was particularly important given the short petitions deadline, as it reduced stakeholder access to potential evidence for legal challenges. The mission put out a statement on 16 August “*call[ing] on the IEBC to continue to publish all results forms online promptly... [to] enable all stakeholders to examine the accuracy of the announced results and point to any possible anomalies.*”<sup>11</sup> The statement noted “*Provision of information and statistics would also help promote confidence through transparency.*”<sup>12</sup>

The EU EOM found that on 19 August (after the deadline for submitting petitions), 7% of the 1,558 polling stations sampled by the EU EOM still did not have the scanned 34A forms available online. Of those that were available, 23% were not fully readable (see above recommendation 2). Also some scanned 34B forms had missing or duplicated pages resulting in confusion about missing or ghost polling stations.<sup>13</sup> The uploading of scanned 34A forms (concerning the presidential election) was

<sup>8</sup> Such changes in uploaded 34Bs means that analysis by others at different times could result in different findings.

<sup>9</sup> The election law requires that presidential polling result forms be published “*on an online public portal maintained by the Commission.*” Elections Act, section 39(1C)(c).

<sup>10</sup> This also requires well-organised custody and storage provisions for forms. Related international commitments include: “*To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.*” International Convention on Civil and Political Rights (ICCPR) article 2(3)(a).

<sup>11</sup> The 16 August EU EOM statement is available at: [https://eeas.europa.eu/election-observation-missions/eom-kenya-2017/31126/eu-eom-statement-16-august\\_en](https://eeas.europa.eu/election-observation-missions/eom-kenya-2017/31126/eu-eom-statement-16-august_en).

<sup>12</sup> The Constitution of Kenya specified that the national values and principles of governance include “*integrity, transparency and accountability*” (article 10(2)(c)). Article 81 also specifies that elections should be transparent. Related international commitments include: “*Holding of regular, transparent, free and fair elections*”, African Charter on Democracy, Elections and Governance (ACDEG), article 3. The ACDEG has been signed but not ratified by Kenya. “*Each State Party shall... endeavour to adopt, maintain and strengthen systems that promote transparency.*” CAC article 7.4. “*Taking into account the need to combat corruption, each State Party shall ... take such measures as may be necessary to enhance transparency in its public administration*” CAC article 10. “*To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest.*” ICCPR, General Comment 34 paragraph 19.

<sup>13</sup> In the days after publication, the EU EOM found four constituencies with a page missing from the scanned 34B (Kandara, Kilgoris, Karachuonyo, and Shinyalu), and one with a duplicated page (Balambala).

reportedly not completed until 25 August, a week after the deadline for filing presidential petitions. To date none of the results for the other 1,881 seats being contested on 8 August 2017 have been put online, and the deadline for submitting petitions for these elections has passed (on 7 September 2017).

**7. *Improve accountability mechanisms for cases when a voter's biometric data is not matched in the Kenya Integrated Elections Management System (KIEMS) kits in polling stations, so there is a complete record of who has voted***

KIEMS kits were used appropriately and consistently for biometric voter identification. However the EU EOM Preliminary Statement noted that *“In nearly half of stations [observed], one or more voters were not recognised by their biometric data (fingerprints), and their alphanumeric data was then checked in the KIEMS. In 43% of such cases, the proper complementary mechanisms were not carried out, meaning there was not a proper record (on the KIEMS or on paper).<sup>14</sup>”* Presiding officers were often not validating in the KIEMS voters who had been identified by their alphanumeric data alone (resulting in these voters not being accounted for in the KIEMS). Polling stations did not consistently have sufficient 32A forms for recording such cases, resulting in some using the polling station diary, others not recording at all, and occasionally the voter register was seen to be used. Weaknesses in recording who has voted risks increased errors and makes the issuing of ballots vulnerable to potential manipulation.

**8. *Undertake full field pilot testing of procedures and technology. Provide public information on testing processes and results, and follow up with stakeholder discussion***

The EU EOM recommended in its Preliminary Statement that *“Any further use of technology be planned more in advance to allow for public consultation, field and security testing as well as training.”* Both capacity and security testing is essential, particularly as reliance on (proprietary) technology increases. Pilot testing should consider technical compliance and also understanding and implementation of procedures by staff.

**9. *IEBC own and be fully responsible for critical ICT results systems and information and allow controlled stakeholder access***

Information technology has been used extensively and became extremely controversial during the electoral process, made more so by the IEBC's incomplete compliance with the Supreme Court's orders for ICT access. The IEBC did not allow the petitioners and the judiciary-appointed experts access to the IEBC cloud servers or the configuration of the external and internal firewalls. Access was further frustrated by the IEBC not giving access to server logs (on a read-only basis), but instead only giving pre-downloaded data. Enhanced IEBC ownership and security of its processes, protection of personal and other sensitive data, and the integrity of the processes through ICT are vital.

The IEBC must provide for independent audits of any technologies that are used in the election process in order to ensure the proper checks and balances needed in a democratic election. The contractual terms between the IEBC and private companies must standardly provide for such scrutiny as part of the overall IEBC mandate. Procedures to access election-related data must be clearly established and subject to independent oversight (especially given the lack of data protection laws in Kenya).

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<sup>14</sup> *“In several instances, there was a lack of sufficient 32A forms or validation in the system by presiding officers. Furthermore, presiding officers often referred to not being aware of having a backup printed voter register, as they had been instructed to exclusively use the KIEMS for voter identification.”* EU EOM Preliminary Statement, 10 August 2017.

For political contenders:

#### **10. Organise agents in each tallying centre and polling stations and check results accordingly**

Agents are an important check, particularly given that once results are declared in polling stations and in constituency/county tallying centres, they are final and cannot be changed (except through a court petition process). The presence of agents in as many polling stations as possible, reduces risk of controversy over the results.

EU EOM observers found considerable gaps in coverage by party/candidate agents of polling stations and tallying centres. For example, during polling EOM observers did not see Jubilee agents in 6% of visited stations in strongholds of the National Super Alliance (NASA), and did not see NASA agents in 27% of visited stations in Jubilee strongholds. During tallying, NASA agents were absent from 4 of the 46 observed tallying centres and Jubilee agents were absent from 5. Of the total 290 34B scanned forms scrutinized by the EU EOM, it appears that Jubilee agents had not signed 25%, and NASA agents had not signed 29% (in some cases there were other signatures that were not identified as belonging to a particular party or candidate).<sup>15</sup> On election day the EU EOM did not receive reports from either camp of manipulations or agents being unable to work.

#### **11. Respect institutions**

The headline of the EU EOM's Preliminary Statement referred to "*parties' forceful criticism of key institutions*", and the report noted that "*The persistent criticism of the integrity and neutrality of state institutions has negatively affected confidence in the election.*"<sup>16</sup> Undermining state institutions' independence, including the judiciary, threatens the rule of law, democratic order and effective governance.

Since the election, NASA and Jubilee have at times been undermining the IEBC and the judiciary respectively. NASA leaders have referred to the IEBC as being "*taken over by criminals*" (1 September 2017). Just after the Supreme Court ruling, President Kenyatta referred to the judges as "*crooks*" and stated "*I have always said, there is a problem with our judiciary though we respect it. However, we shall re-visit that.*" This has been followed by similar remarks from other Jubilee leaders.

The first article of Constitution of Kenya establishes a balance of power, with the judiciary, the IEBC, and other independent state organs empowered to fulfil their respective mandates. This includes the Office of the Director of Public Prosecution (ODPP) and other constitutionally independent commissions that support the sovereign power of the people of Kenya, as established in the Constitution.

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<sup>15</sup> Other analysis could result in different findings, given that some 34Bs were replaced online.

<sup>16</sup> The IEBC is a constitutionally *independent commission, with article 81 specifying that elections be "conducted by an independent body... and administered in an impartial, neutral, efficient, accurate and accountable manner."* Related international commitments include: "*Strengthen political institutions to entrench a culture of democracy and peace.*" ACDEG, article 12. "*State Parties shall provide the above-mentioned institutions with resources to perform their assigned missions efficiently and effectively.*" ACDEG, article 15. "*Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.*" ACDEG, article 17. "*An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.*" ICCPR, General Comment 25, paragraph 20.

## ***12. Avoid hate speech and use language to build and unite the nation***

The increasingly tense electoral environment risks a climate of fear and instability.<sup>17</sup> On 5 September Moses Kuria, Jubilee MP, was filmed in a rally in Kiambu referring to the opposition as “*demons*” and calling for a manhunt for the close to 70,000 people who voted for NASA. Seven days later on 12 September, he was charged with incitement to violence and the next day released on bail. Former NASA Senator Johnson Muthama on 10 September called President Kenyatta and Deputy President Ruto to a duel and was charged, also on 12 September, with incitement to violence and also released on bail. Both cases are due to be heard on 23 January 2018. Any alleged hate speech and incitement to violence needs to be followed up with prosecutions, and no-one should be above the law.

The EU EOM is encouraged by the 8 September 2017 statement of the National Cohesion and Integration Commission (NCIC) which notes that divisive politics must be rejected and states that it is investigating 273 “*hate mongers, groups and pages amongst social media platforms.*” The EU EOM will be following hate speech, actions by party leaders to prevent hate-speech, and measures taken by the responsible authorities, as well as the way in which fundamental freedoms and rights are respected in the process.

For other state agencies:

## ***13. Undertake thorough investigations of alleged electoral offences in order to promote prosecutions where warranted, including of IEBC staff***

To date for these elections, there have been eight convictions for electoral offences. The ODPP reported 95 pre-election criminal cases, mostly related to party primaries, and 85 individuals have been charged in relation to election day crimes (of whom 24 are polling officials). There have to date not been any investigations against senior public officers who have reportedly breached the law. Some stakeholders have questioned the ability of the ODPP to challenge more senior leaders. Full and effective investigations are needed, requiring coordination between the Directorate of Criminal Investigation, the NCIC and possibly also other agencies.<sup>18</sup> Fast, comprehensive and effective investigations are needed so that there is individual accountability for actions taken.<sup>19</sup>

## ***14. Support civil society organisations having full freedom to contribute to the electoral process***

The election process has been scrutinised by a wide variety of organisations with respective specific expertise since the mass voter registration exercise in 2016, with CSOs looking at *inter alia* the legal framework, the election administration, and policing. In a statement on 16 August, the EU EOM expressed its concern at a letter revoking the registration rights of a key NGO (Kenya Human Rights Commission, KHRC) and the orders to close down another (the African Centre for Open Governance, AfriCOG). The EU EOM called on the Kenyan authorities to “*give civil society the space and security to work towards greater democracy for Kenyans.*” The order by the Acting Cabinet Secretary of

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<sup>17</sup> The Constitution of Kenya specifies in article 81 that elections should be “*free from violence, intimidation, improper influence or corruption*”.

<sup>18</sup> Working with the Election Offences Act, the National Cohesion and Integration Act, the Leadership and Integrity Act, and the IEBC Act.

<sup>19</sup> Related international commitments include: “*Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced.*” ICCPR General Comment 25, paragraph 11.

Interior to the NGOs Co-ordination Board to suspend actions against the affected organisations for up to 90 days was welcomed. However, further commitments and actions would be beneficial to protect civil society's right and responsibility to contribute to the electoral process, as well as to avoid a chilling effect.<sup>20</sup> Civil society can contribute through comprehensive voter education across the country, (including in regards to electoral offences), scrutiny of the process, and conducting a parallel vote tabulation (PVT).

**15. Promote accountability in the maintenance of public order. This includes providing information on security force deployment (including command structures), and allowing journalists to provide full coverage**

The EU EOM noted in its Preliminary Statement that security forces behaved appropriately at rallies and polling stations observed, contributing to a relatively peaceful process. After the 11 August results announcement the country stayed generally calm, however unrest and protests in informal settlements of Nairobi and parts of Nyanza were met with some excessive and disproportionate force by the police. At least 27 people were killed and many more injured, according to several national organisations (including the Kenya National Commission for Human Rights). At least two children were reported killed in the disturbances. Video footage seen by the EU EOM of unrest in parts of Kisumu and Nairobi on 12-13 August shows indiscriminate firing, homes being raided by security personnel, and extreme force being used. Subsequent reporting by Human Rights Watch and others has also referred to sexual harassment and violence.

At the time, the government denied using live bullets and claimed only six people were killed (all alleged criminals) and that force was only used against looters. The Independent Policing Oversight Authority (IPOA) set up an investigation team, including ODPP prosecutors, to look at police behavior. Several journalists were also reportedly prevented by security forces from covering the disturbances, denied access to information, beaten or detained while reporting from the scene in Nairobi and Kisumu. Media seemed largely unable or hesitant to report on the clashes and police responses.

On 16 August, the EU EOM made a statement calling on state authorities *“to police effectively and to bring order without increasing tensions or using live fire. The EU EOM calls for state security agencies to be transparent in explaining their approach to security, to provide the public with reliable information about fatalities and injuries, and to undertake investigations for full accountability of state and other actors.”*

The EU EOM maintains the importance of protecting civil liberties, including the right to protest, and the need for proportionate responses without the use of live fire, and for full accountability for the actions of security services. Plans for the deployment of security agencies should be clear in advance, with mandates and command structures explained to the public so any misconduct can be traced.

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<sup>20</sup> Related international commitments include: *“Create an enabling environment that will enable civil society and the media to hold governments to the highest levels of transparency and accountability in the management of public affairs.”* Convention on Preventing and Combatting Corruption (CPCC) article 12. *“State Parties... Create conducive conditions for civil society organizations to exist and operate within the law”* ACDEG, article 12. *“State Parties shall take measures to ensure and maintain political and social dialogue, as well as public trust and transparency between political leaders and the people, in order to consolidate democracy and peace.”* ACDEG, article 13. *“State Parties shall create a conducive environment for independent and impartial national monitoring or observation mechanisms.”* ACDEG, article 22.

**16. Provide full security for IEBC commissioners and staff**

On 31 July the EU EOM Chief Observer, Marietje Schaake, said "*Full protection for those responsible for the Kenyan elections is vital, so that they can undertake their tasks without fear. All election administrators need to be able to operate freely and safely in accordance with the Constitution of Kenya.*" This followed the violent death of Chris Msando, IEBC ICT manager, shortly before election day. The EU EOM has repeatedly called for an independent investigation into his murder. Currently tensions appear to be more pronounced and therefore it is vital that measures are taken as needed for IEBC commissioners and staff to safely undertake their responsibilities.

For the media:

**17. Promote live media coverage of constituency tallying centres to enhance the transparency of the results process**

Media freedom and scrutiny of the different parts of the electoral process is critical. In particular media coverage of tallying processes is an important check on the tabulation and transmission of results. Such media presence allows a wider group of stakeholders to see the process and to check results. This is particularly important given the finality of constituency results, the concerns that have been raised about results transmission, and the delay in the IEBC publication of constituency-level results. However, over the 8 August election, the media predominantly focused on the national tallying centre (Bomas) and the keyed-in results as opposed to the results forms that are the basis for the declared results. Media should therefore be free and encouraged to show all the results declared at constituency level across the country.

**18. Provide accurate and complete coverage of responses to the results announcement and security measures being taken**

At all times journalists need to be able to report freely, and therefore any state actions that promote this are encouraged. Kenyans also need to critically assess information from the media and social media especially in view of the highly polarized and sensitive environment in Kenya, and the "*fake news*" stories in circulation.

While Kenya has a vibrant media landscape, the EU EOM Preliminary Statement noted that "*Journalists in several counties were threatened in connection with their reporting on political or election-related matters and stated that they commonly exercise self-censorship.*" Self-censorship also partly explains why the media did not provide timely information about the post-election protests that arose, the response of security agencies and the severity of the violence (including details of casualties). As referred to above, (in recommendation 15), several journalists reported being prevented by security forces from covering the disturbances. A lack of media coverage weakens citizens' knowledge of what is happening and reduces a sense of scrutiny and subsequent accountability for actions.

The EU EOM will continue to observe the 2017 electoral process in Kenya with a field presence of long and short-term observers in different parts of the country for the re-run presidential election. The EU EOM will assess implementation of these recommendations, adherence to the legal framework of Kenya, and compliance with Kenya's international commitments. The EU EOM will release a full final report with long-term recommendations some two months after completion of the entire electoral process, including the re-run.

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This Interim Statement is available on the mission website (Website: [www.eueom.eu/kenya2017](http://www.eueom.eu/kenya2017)) and social media links: Facebook: [www.facebook.com/eueomkenya2017](http://www.facebook.com/eueomkenya2017), Twitter: [@eueomkenya2017](https://twitter.com/eueomkenya2017), Instagram: <https://www.instagram.com/eueomkenya/?hl=en>).

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