



PRESS RELEASE

2022 Presidential Petition: The Trial Observation Mission Exits Kenya

NAIROBI, 5 SEPTEMBER, 2022 – The High-Level Panel of Eminent Jurists that arrived in Kenya on 28 August 2022 to observe the proceedings of the 2022 presidential election petitions under the aegis of the African Judges and Jurists Forum (AJJF) have completed their mission.

This is the third Trial Observation Mission that the AJJF has carried out in Kenya, having previously observed the 2013 and 2017 presidential election dispute resolution processes. The AJJF also had the opportunity to observe a similar process in Zimbabwe in 2018, where a Supreme Court judge from Kenya was part of the delegation.

The 2022 mission, which was headed by Retired Chief Justice of the Republic of Tanzania Mohammed Chande Othman, attended the Supreme Court hearings to monitor and document the process of the hearing of the petitions. Other members of the mission included Justice Henry Boissie Mbha of the Supreme Court of Appeal and immediate past President of the Electoral Court of South Africa, Justice Moses Chinhengo, AJJF Chairperson, Justice of the Court of Appeal of Lesotho and former Judge of the High Court of Zimbabwe and of Botswana, Lady Justice Lillian Tibatemwa-Ekirikubinza of the Supreme Court of Uganda, and Lady Justice Ivy Kamanga of the Supreme Court of Appeal of Malawi.

The mission did not carry out a merit review but rather an observation of the international human rights standards on fair trial, the role and independence of the judiciary in electoral dispute resolution and the context of the elections in the run-up to the presidential petitions. The mission composition also allowed the various judges to draw lessons on case management for presidential election disputes, which can form the basis for experience-sharing on the African continent.

The mission also conducted bilateral meetings with the two main presidential aspirants, His Excellency William Samoei Ruto and Honourable Raila Amolo Odinga, as well as the Law Society of Kenya (LSK), who were admitted as amicus to the petition. The mission was also pleased to meet two former Chief Justices of the Republic of Kenya: Rtd Chief Justice Willy M. Mutunga and Rtd Chief Justice David K. Maraga. These meetings allowed the mission to gain an understanding of the context of the conduct of the 2022 elections in Kenya and to share ideas on institutional strengthening as a means of consolidating democracy in Africa.

The mission noted that the election was generally peaceful, and various election observation missions have confirmed this. The mission was also pleased to note that all the main presidential election contenders have embraced the judicial process, which speaks to their confidence in it.

The mission would like to commend the Supreme Court for its management of the court process, particularly in light of the complexity of the matter, which was evidenced by the fact that this was the first time it was handling seven presidential petitions, with multiple volumes of evidence, within the 14 days circumscribed by the Constitution. The parties to the case were given sufficient opportunity to ventilate their cases, with a full day being allocated to the petitioners, a full day to the respondents and the final day for rejoinders and submissions on the scrutiny report. Each side had full and competent legal representation, and the counsel's conduct also allowed the court to effectively manage the time limit allocated for the hearings.



The issuance of directions during the pre-trial conference, the scheduling of the hearings and the proper and effective delineation of the issues for determination from the multiplicity of grounds raised in the Petitions all demonstrated that the court was in charge of the process. In addition, the livestreaming of the court proceedings allowed Kenyans to follow the proceedings despite the limited access to the court premises.

The mission would like to express its appreciation to the Chief Justice and President of the Supreme Court of Kenya, Lady Justice Martha K. Koome, and the Judges of the Supreme Court for allowing access to court premises to observe the trial and for their kind hospitality during the court sessions. The mission is also grateful for the hospitality of the International Commission of Jurists- Kenyan Section for their kind generosity and for providing technical support during the mission.

The AJJF will issue a comprehensive mission report in the coming days.

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