

NO SECRET

ELECTION OBSERVER MISSION

PRELIMINARY STATEMENT

Election Observation in East Nairobi
(Kamukunji, Embakasi, Starehe and
Mathare - Sub Counties) and Nakuru
East Sub County.

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CAUTION

Scofield Associates' election observation mission (SA EDM) delivers the preliminary statement before the completion of the entire electoral process.

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Election Observation in East Nairobi (Kamukunji, Embakasi, Starehe and Mathare – Sub Counties) and Nakuru East Sub County

General Elections – August 9, 2022

Scofield Associates' election observation mission (SA EOM) delivers the preliminary statement before the completion of the entire electoral process. While the other electoral positions are completed, the presidential tallying and adjudication of petitions remains. The report currently covers observation of pre-election activities, election day activities, and post-election day activities. There was respect for fundamental freedoms in Kenya's general elections, but procedural shortcomings and political mischief demonstrate the need for improvements.

Introduction:

The joint Scofield Associates mission deployed a 58-member local level and community-led stakeholders with members from 10 civil society organizations. The delegation was co-led by Mr Scofield Yoni Muliru, Executive Director Scofield Associates; Mr Kennedy Isigi, Kamukunji District Peace Committee Chairman; Mr Salim Juma, Director Kamukunji Community Peace Network; Mr Thomas Akendo, Embakasi District Peace Committee Chairman; Ms Millicent Akinyi, Nawiri Ladies CBO, and Mr Stephen Muchai from the Anglican Church Development Services (Central Rift Office).

The delegation visited polling stations from August 8, 2022, to the final constituency tallying process that ended on August 11, 2022. These included polling stations in the East of Nairobi comprising the stations in Kamukunji, Starehe, Mathare, and Embakasi Sub-Counties. Additionally, the team also visited polling stations in Nakuru East Sub-County. The delegation conducted its activities per Kenyan laws and the Declaration of Principles for International Election Observation. The delegation's initial findings are in reference to international and regional standards for credible elections, including the African Charter on Democracy, Elections and Governance and Kenya's legal framework for elections.

All activities were strictly nonpartisan without interfering in the election process. The delegation is grateful for the warm welcome and cooperation it received from all the voters, law enforcement and the Independent Electoral and Boundaries Commission staff with whom it interacted.

Pre-election Activities:

Overall, the political parties and candidates had the opportunity to campaign. Although there were reports of some challenges encountered by the parties and candidates, they were isolated incidents. The national security agencies dealt with those relating to security, with the IEBC offering guidance on candidate issues and other electoral procedures.

Our observation was more on non-state actor pre-election preparedness processes. We took note of the critical contribution made by several stakeholders like faith-based organizations, civil society organizations, the private sector, and the media, which helped promote peace and harmony during the campaigns, before and on polling day. This election saw most of the civil society elections investing in peace messaging and advocacy before elections. The local civil society also invested in voter education and application for observer status. While there was interest at various local organizational levels, similar interest was missing on individual voters; with most stations witnessing lower voter turnout.

The Church and Mosques guided the expectations and behaviour during the election period. Such an engagement ensured some level of order during the election circle. Furthermore, while categorizing the media as part of civil society, their preparation through information sharing and public debates for the candidates, also provided order during the pre-election period.

However, at various stages of the electoral process, there were problems associated with social media, particularly regarding disinformation, misinformation and hate speech. In this regard, we observed that the Independent Electoral and Boundaries Commission (IEBC) was generally reactive in its responses. We also identified various stakeholder efforts to address challenges. Besides the IEBC and the National Cohesion and Integration Commission (NCIC), the mainstream media contributed to the election process through debates and clarification of various issues.

Election Day Activities:

1. **Opening of Voting:** - Across the stations where the observation was made, the voting started between 6:00 am and 6:30 am in 80 of the 117 polling stations. The challenges included lack of electricity at the stations to be opened early, delays in the arrival of the voting materials, and overall confusion on the

alphanumeric arrangements of the streams for the queues. In other instances, like was observed in Pumwani Social Hall, there were network issues, making it difficult for voter identification with the KEIMs kit. In other stations, Morrison Primary, Bahati primary, and Dr Kraft primary, the KIEMS kit failed and only resumed work at 8:30 am. There was the case at Kwa Njenga primary room 19.

In other streams, while the materials were present and all procedural issues in place, the space was so small, making it congested with the agents, clerks, polling booths and the placement of the ballot boxes. The polling station and streams were marked to the benefit of the public. However, the teams observed that even with the posters and the markings providing directions to the public members, they often overlooked these materials and waited for advice from the clerks at the specific stream, which caused delays.

2. **Voter Identification:** - The identification process was smooth, with witnessed delays of failures from the KEIMs kit. There were other challenges associated with confusion based on the court decision on the presence and the use of the manual registers. Two out of ten polling stations had manual registers present at their polling station streams. While the manual register use was at the discretion of the IEBC Presiding Officer (PO), some voters were denied voting since their names were not appearing in the kit. Overall, these voters had no option for resolve in the streams where the manual register was absent.

The voting period did not consider the specific cultural and religious preferences. Areas with a larger Muslim community whose cultural practice avoids hand touching by the opposite sex, presented challenges during identification. With the challenges from the KEIMs kit occasioned either by network issues or sweaty hands of the voters, the presiding officer or one of the clerks was forced to hold a voter's finger on the kit for verification. This process was uncomfortable for Muslim women, especially when the IEBC officer was of the opposite sex and caused delays. As part of the planning process, it would be great to anticipate some of these challenges and plan for them for the national and local by-elections.

3. **Voter Assistance:** - The IEBC should be credited with some investment in including brail support during voter education. However, this did not transition to the ballot papers. Overall, the process of voter assistance was majorly peaceful, with the agents agreeing to have either the PO or the clerks assist with the process. There were minor incidents that included voters either being completely blind, necessitating a readout of the candidates, or colour-blind, ensuring a readout of the voters' colours of the ballot papers. While such a process assisted the election, reading out may associate various colours with specific political outfits and interfere with Kenyans' individuals' decision-making process.
4. **Balloting:** - Other than the issue with colour blindness, some voters still dropped their ballots in a different box resulting in rejection of those votes at the point of counting. The other challenge was that of space within the various polling station streams. There were occurrences where the distance between the ballot boxes and the polling booth was less than five meters. More investment should be in creating polling stations whose specific role would be voting.

Additionally, there were challenges for various voters who found it difficult to put their mark on the ballot, especially for the presidential and governor elective posts, due to the space between the candidate and the running mate, on the ballot paper. Most of the voters were indecisive on whether to place the mark between the candidate and running mate or, in the end, at the extreme right.

On campaign financing, the absence of campaign finance regulations ensured that candidates spent large sums of money on direct handouts to organizers, supporters, and event attendees. These expenditures happened during campaigns and up to the time of voting. An interesting observation was various voters took photos or outright recorded their voters' marks on a ballot paper using their phones. The recordings and photos were shared in community groups within the respective sub-counties. We assume that this process was to provide indirect guidance to other members of the community

group on who to vote for, and also a means of confirming their votes for specific candidates before being given a token of appreciation.

5. **Social Distancing:** - It was non-existent across the areas we observed. Additionally, water and soap were absent, and the wearing of masks was not a requirement. While this does not serve as part of the internationally required and regionally established processes of conducting credible elections, public health risks during a post-pandemic period are crucial. The IEBC tried to ensure that the division of the voters alphabetically to reduce the voter sample in queue per stream. While a step in the right direction, the individuals in the queue did not observe social distance. It's also commendable that the IEBC also provided tents in open-air environments for voting.
6. **Polling Station Access:** - This is a critical requirement that requires observation at multiple levels. As a start, physical access was one of the challenges observed at the polling stations, especially for the individuals living with disability. While the commission majorly used learning institutions and other existing public structures and facilities, wheelchair access, for example, was not critically considered.

Poor communication between the commission to the observers and those trained resulted in the PO's locking out certain observers for lack of an accredited letter from the IEBC. It was against the backdrop of the IEBC accreditation team confirming that the badge will serve as the letter and confirmation with the National Identification Card will guarantee access at the stations.

The third level of access was also on the level of media allowed to the different stakeholders at the polling stations. While the PO did not allow photography at the booth areas, it was unclear whether general photography was allowed at the polling station area, with minimal caution from the election's officials to those seen taking photos.

7. **IEBC staff:** - There was a general feeling of proper preparation from their training and their presentation at the polling station. As a result, they were able to guide the voters whenever required to do so. Additionally, the number

of female staff at the local level was encouraging, with an almost 50% representation of male: female among the clerks per polling station stream. The IEBC also invested in youth as key staff, which is a positive direction for the commission.

While there were notable positives in the behaviour of IEBC staff during the elections, there were unexpected instances of non-professionalism by the staff. For example, in Quarry market polling station, stream 018 in Pumuwani, the clerks pulled out many voting papers before the voters arrived at their desks. As a result, in some instances, a voter had more than one ballot paper. The agents noted this and requested a rectification.

8. **Law Enforcement:** - The police were professional in their dissemination of roles at the station level. Other than providing security at the specific stations, they could also provide directions and information when asked by voters. The cooperation between the IEBC and the police should continue to improve their capacities on election issues and irregularities. Such an engagement encourages voter/police engagement from a level of knowledge and not of harassment.

There were minimal cases of violence. For example, at New Eastleigh primary school, there was an incident between an ODM Member of County Assembly (MCA) candidate who had a conflict with a voter and sprayed him with some substance on the face. The voter was rushed to the hospital, and the voting process continued peacefully. Additionally, there were incidents where agents of local MCA aspirants were trying to issue money to voters in the queues. However, officers from the Director of Criminal Investigations (DCI) arrested four individuals at the Maina Wanjigi polling stations, and the voting continued smoothly. Other than the arrest of Nakuru East MP (Member of Parliament) elect, Mr David Gikaria, the voting process in Nakuru was rather smooth.

9. **Voter Behavior:** - Across the 117 polling stations, our observers noted that most voters did not go home after the voting. They preferred to stick around the voting station to "guard the votes" against theft. Other voters took up the

responsibility of finding out whether individuals had voted or not by checking the ink on the left-hand pinky finger. These civilians used their diplomatic skills to encourage those who had not voted to go in and vote. Unlike other periods, voting ques did not start cumulating very early like in previous general elections. By 6:00 am, only a handful of voters had arrived at the various polling stations.

10. **Closing of Voting:** - Most polling stations closed past 5:00 pm to accommodate the morning delays caused by the KEIMs Kit and other procedural issues. Additionally, the identification of the voters and the constant hanging of the kit resulted in some stations closing voting at 7:00 pm.

Vote counting process was generally smooth, with little to no issues raised at the stations. The process, however, dragged on to over 24 hours in most of the stations. In addition, while most agents were present all through the voting process, most left the stations immediately after the presidential tally. It was either indicative of a limited number of agents to the other elective posts or a specific interest only in the presidential count at the stations.

Finally, with limited voter education even to the agents, certain irregularities, including the two stamps on form 34A, the closing of the tally with a straight line, or an inverted "V". As seen from the forms considered to be the final form for upload, some of these marks were missing.

Post-election Activities:

These findings touch on the process after the completion of the voting and the final transmission of the presidential votes from the counties and the national tallying centre. They may change depending on the response and action to IEBC news as it develops. While delays exist, the process was generally smooth, with the media stakeholders sharing their tally using results from the IEBC forms portal.

Observations from the National Tallying Centre (NTC) also show that a precise sitting arrangement should be put in place and communicated before the commencement of the process. At this venue, the NTC did not escape the challenge resulting from improper devices being at the wrong place at the wrong time. A recommendation to

the IEBC would be to have a mechanism for ensuring the verification of documents without the presence of any other external electronic, printed or writing material present. Such a process would reduce the back and forth between presidential candidates and the returning officers.

By day three after the elections, only 15 constituencies out of 290 had their presidential tally announced as verified results by the presidential returning officer Mr Chebukati. Such delays cause anxiety within the political parties and the electorate in general. The process then beats logic as the presidential votes were the first to be counted at the constituencies but waited until all the other categories before disseminating information to the national tallying centre.

We welcome the openness from the commission to share the forms online, allowing for mainstream media tallying. However, at almost the end of the parallel tallying process by various media houses and political parties, the advice was that the process stops, and Kenya waits for IEBC to provide the full results. While the anxiety may have advised this information that the tallying was causing, a halting of the process has caused more impatience with the level of misinformation and fake news being on the rise. A better option would be to include the media council as the convener of tallying and have the similarly shared with similarity across all the stations in the country.

Fake news and misinformation, also termed "character assassination" - by IEBC's chief executive, may cause an eruption in an otherwise peaceful process. Other than the regular updates from the commission on the tallying process at the national tallying centre, it would be great for IEBC to future prove misinformation by investing in a social media update process that goes beyond the one-time (regular) updates on the tallying process.

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