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Report

on the mission to observe the elections of 27 December 2002 in Kenya

Baroness Nicholson of Winterbourne, MEP, Head of Delegation
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Introduction

The Conference of Presidents on 4 September 2002 authorised the sending of a delegation of five members to observe the presidential and parliamentary elections of 27 December 2002 in Kenya. Five members were proposed by the political groups. However, as the Bureau of the ACP/EU Joint Parliamentary Assembly had also decided to send a delegation, the two Members of the European Parliament who were also members of the JPA - Fodé Sylla and Nelly Maes - became part of the JPA Delegation¹ (together with three ACP MPs) instead of the European Parliament one.

The other three MEPs - Emma, Baroness Nicholson of Winterbourne (ELDR), Glyn Ford (PES) and Jim Nicholson (EPP-ED) - formed the European Parliament Delegation. Baroness Nicholson was elected Head of Delegation.

The European Union mounted a large election observation mission (the EUEOM) which was headed by another MEP, Anders Wijkman, appointed Chief Observer.

Background to the elections

Daniel Arap Moi had been president since the death of Jomo Kenyatta, first President of Kenya, in 1978. Both belonged to KANU (the Kenya African National Union). A multiparty system was introduced in 1992 and elections held in that year and in 1997. Both these elections were very far from satisfactory, being attended by considerable political violence, including many deaths, and vote rigging. Moi was the presidential victor in both elections, a fact also attributable to a divided opposition.

The Kenyan Constitution limits any president to two five-year terms of office. Kenyan ruling circles considered the possibility of changing the Constitution to permit Moi to run for a third term, but decided not to follow this path. KANU selected Uhuru Kenyatta, the son of the first president and independence leader, as its presidential candidate. There was a general feeling that Moi had imposed his choice of candidate on the party, and selected him, a highly inexperienced politician, as someone who could be influenced after becoming president and who would not countenance any legal action against the numerous abuses under the Moi presidency.

The bad feeling in KANU engendered by the selection of Uhuru Kenyatta led to several members leaving it. They largely joined the opposition which, in the form of NARC (the National Rainbow Coalition), a movement composed of various opposition parties, agreed to present a single candidate for the presidency, Mwai Kibaki, a veteran politician who had split from KANU in 1992. His Democratic Party had run him for president and he had been the runner-up to Moi in 1997. Three small parties, with very limited, often regional bases, also presented presidential candidates.

Ethnic origin plays a significant role in Kenyan society and politics. Jomo Kenyatta was a member of the largest tribe, the Kikuyu, but Moi's tribe, the Kalenjin, is much smaller. Both leading presidential candidates in 2002 were Kikuyu.

¹ The JPA Delegation has published a separate account of its mission

There were serious and widespread fears that the election might be attended by the sort of violence seen at the previous ones, and also that the ruling party (and possibly others) might have recourse to unfair practices and ballot rigging. It was partly because of this that the European Union and the European Parliament had decided to observe the elections, as well as because the replacement of a long-term incumbent president would be a real test of Kenya's democratic development. The European Union was invited to observe the elections by the then Foreign Minister Marsden Madoka.

The Delegation's work before polling day

The Delegation began its work in Nairobi a week before polling day. The programme annexed to this account gives details of the various meetings they had. The meetings in Nairobi, before and after polling day, were held together with the JPA Delegation. Both delegations were fully briefed on the political situation and election rules and procedures by Anders Wijkman and members of the EUEOM Core Team who had been working in Kenya for the previous six weeks.

Concerns about election-related violence had considerably abated. The most serious case of violence had been the terrorist attack on a hotel in Mombasa, where there had been considerable loss of life. This was unconnected with the elections, but had cast a pall over the whole country and led to increased tension and a heightened security alert. No significant effect on the election campaign was to be noted, however.

Various problems connected with the elections were raised in the Delegation's meetings. The electoral register was felt to be unduly inaccurate, with significant numbers of otherwise eligible voters having been omitted, partly linked to the fact that many people had not checked the draft register and asked for corrections to be made. There had been several instances of violence connected with the selection of presidential and parliamentary candidates.

There were questions about the impartiality of press coverage. The written press reflected a wide diversity of political positions but the Kenyan Broadcasting Company's television coverage was perceived as being unduly favourable to KANU and the government had been very restrictive in granting radio licences to broadcast locally outside the capital.

Both main parties expressed the fear that the other would engage in vote-rigging, a claim that was probably better founded coming from NARC, in that governing parties normally have the advantage in fiddling the procedures. Potential techniques were described to the Delegation in some detail and NARC provided a list of 19 methods of rigging, with indications as to which might be expected in which constituencies.

The Delegation left Nairobi on 24 December and went to Nyeri, in Central Province, to observe the run-up to the polling and the polling itself and count. The area is very predominantly Kikuyu, with KANU support expected to be heavy in the southern Kiambu area nearer to Nairobi, mixed further north in Muranga and more for Kibaki in his home area near Nyeri. The JPA Delegation went to Rift Valley Province, another critical area.

Polling day and just before

The day before polling day, when the Delegation visited polling stations and local party offices in Nyeri, there was some disquiet over whether everything would be ready in time. In some cases ballot papers were late arriving. On 27 December, polling stations were to open at 06.00 hours and remain open for a period of 12 hours. Facilities in many polling stations were rudimentary. The polling station at Kanoga Primary School was not alone in having no electricity supply - Tilley lamps functioned well - and being surrounded by thick mud owing to the exceptionally rainy weather.

This gave the Delegation some insight into the poor state of Kenya's schools (and transport infrastructure). One of NARC's election pledges was to improve the educational system and make primary schooling free for all.

Kanoga polling station opened 45 minutes late, but duly stayed open until 18.45 hours to provide voting facilities for the requisite 12 hours. Some polling stations visited in Karatini, in Mathira constituency, had managed to open on time, thanks to election officials having turned up at 03.00 hours to prepare them.

Mathira constituency had been identified by domestic observers as a hotspot owing to its history of violent electoral politics and recent violence surrounding the nomination process in this election. Parliamentary candidates included three strong and influential politicians. People in Karatini expressed delight that international observers were present and even more delight in the fact that no significant incidents of violence had marred the election campaign. This was a great improvement on 1997, when several deaths had occurred.

Three elections at the same time

Each voter was called upon to cast three votes, on three separate ballot papers, in presidential, parliamentary and civic (local) elections. In all polling stations observed by the Delegation, voters were given first the presidential ballot paper and only when that vote was cast did they receive the parliamentary one; when that vote was cast, they received the civic ballot paper. This made the voting procedure rather lengthy, but helped to avoid confusion. This was a major factor contributing to the long queues in front of several polling stations visited by the Delegation; waiting times of some two hours were reported.

Would-be voters not on the electoral register

Voters were to present a valid ID card or passport plus a voter card and could then vote if their names were on the electoral register. There were several instances in particular of voters' names not being found on the electoral register, but presiding officers were scrupulous about checking the various registers available - there was one for those whose names had changed through marriage and the original hand-written version (to ensure that someone's name had not been omitted in the transcription).

In the cases the Delegation observed, the presiding officers would not allow someone not found to be on an electoral register to vote, despite their having the power to allow such voting where they were convinced of the person's right to vote. This practice, coupled with the fact that voter

registration had led to many omissions, meant that considerable numbers were disenfranchised, but did avoid some suspicions of rigging.

Use of symbols on ballot papers

Ballot papers contained the names of all candidates, with their party symbol. The names of the parties were not included, and the Delegation was unable to find any election officer who could identify all the parties by their symbols. The symbols of KANU and NARC were, however, widely recognised, as was that of Safina ('ark' in Swahili, for which the symbol was a boat).

Illiterate voters

Voters who declared themselves illiterate and in need of assistance to vote were asked to find someone to help them and sometimes were sent away to come back with such a person. Rules permitted an election officer to assist them but most presiding officers in the polling stations observed did not avail themselves of this provision.

In the polling stations observed by the Delegation, it was the practice for each vote cast by an assisted voter to be observed by one agent from each party present. (In some polling stations, apparently, only one agent observed the ballot paper being filled in). The agents, often five or six of them, would rush to the voting booth, where the assisted voter was supposed to announce to the assistant which party or candidate s/he wished to vote for; the assistant would then mark the ballot paper accordingly.

The aim of this was to avoid pressure to vote for a particular candidate being exerted by the assistant, but of course it meant that the assisted person's vote was not secret. Party agents, however, had to sign a declaration promising not to reveal how the assisted person had voted.

The Delegation feels that greater efforts to promote recognition of party symbols in future could enable illiterate voters to vote without help, at least those able to handle a pencil and make an appropriate mark in the desired box (various types of mark were permitted).

Secrecy of the ballot

Apart from the lack of secrecy of the votes of 'assisted persons' mentioned above, the Delegation noted that the placing of voting booths in certain cases, together with the fact that they were covered by a very light fabric, rendered them rather transparent when the sun shone on them.

Use of indelible ink

The provision for dipping the voter's finger in indelible ink to prevent her/his returning to vote a second time was widely respected, though normally the finger in question was the pinkie and not the index finger of the left hand as the rules stated. However, the Delegation noticed that election officers were not always very diligent in checking the fingers of those arriving to vote to ensure they had not voted already. No protests were heard, however.

Careful procedures

Presiding officers observed were scrupulous in ensuring that the correct procedures were followed both in the vote (with the minor exception noted above) and in the count. This took more time - some waited two hours to vote, and in one count observed the boxes were not actually opened until 21.30 hours - but ensured that party agents present could follow closely every stage and had ample opportunity to register objections; no objections were observed.

The count took place at the polling stations, with the tallies being then communicated to constituency headquarters and thereafter to the Central Electoral Commission in Nairobi. This helped avoid suspicions of rigging as ballot boxes were not transferred anywhere.

Domestic observers and party agents

At every polling centre visited there was a domestic observer from K-DOP. These observers followed proceedings attentively (some of them for 16 hours or more), and were treated considerately by election officials, as were the party agents. They were involved in every stage, though in one case in greater numbers than permitted by election law.

After polling day

The Delegation concluded, on the morning after polling day, that they had seen nothing which would in any way call into account the validity of the poll. Neither had they been informed of any serious difficulties relating to the campaign. The Members expressed this view in the discussions they (and the members of the JPA Delegation) held with Anders Wijkman, the Chief Observer. The latter said that there had been no reports of violence on polling day. Turnout had been 55 - 62 per cent but, given that the electoral rolls probably contained only 60 per cent of the voting age population, this meant that fewer than 40 per cent had cast a vote. The JPA Members said that their own observations had led them also to form a positive view of the election.

The European Parliament and JPA Delegations had issued a joint press release shortly after they arrived (see annex 2). In the light of this, and at the request of the Chief Observer who wished to avoid a proliferation of messages, the Delegation decided not to issue a final press statement¹. Baroness Nicholson, however, shared the platform with Mr Wijkman and the Deputy Chief Observer, Graham Elson, at the press conference held in Nairobi on 29 December to deliver the Preliminary Statement of the EUEOM.

At the press conference, Baroness Nicholson paid tribute to the highly professional work carried out by the Chief Observer and his team and expressed the political judgement that this election had been a major step forward for Kenya, with an orderly and peaceful transition of power from a long-standing incumbent president to a new one, from a new political formation. "We, elected Members of Parliament of the European Union", she told the assembled journalists, "shall return to Europe determined to do our best to push forward the EU's efforts to help the Kenyan people."

The Delegation would like to thank in particular Gary Quince, Head of the Commission Delegation, and his staff, for the very considerable help they gave the Delegation before and during its visit to Kenya.

¹ The JPA Delegation, however, did issue a final press release which is annexed to their report

EUROPEAN PARLIAMENT



COMMITTEE ON DEVELOPMENT AND COOPERATION
Delegation of the European Parliament to observe elections in Kenya
22 - 30 December 2002

Participants

- Emma, Baroness NICHOLSON OF WINTERBOURNE, MEP (ELDR, UK),
Head of Delegation
- Glyn FORD, MEP (PSE, Italian/UK)
- James NICHOLSON, MEP (PPE-ED, UK)
- Michael WOOD, Administrator (UK)

PROGRAMME

22 December 2002

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| 20.45 | Arrival in Nairobi of Baroness Nicholson |
| 20.50 | Arrival in Nairobi of Glyn Ford and Michael Wood |
| 22.30 | Briefing by Gary Quince, Commission Delegate
Nairobi Serena Hotel |

23 December

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| 09.00 - 12.30 | Briefing by EU Observer Mission Core Team (with Short-Term Observers) |
| 12.30 - 14.00 | Lunch with Anders Wijkman, Chief Observer, ACP/EU Joint Parliamentary Assembly Delegation and François Grignon, International Crisis Group representative |
| 14.00 - 18.00 | Briefing by EU Observer Mission Core Team |
| 19.30 | Dinner with businessmen and church leaders |
| 22.45 | Arrival in Nairobi of James Nicholson |

24 December

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| 09.00 | Meeting with Mr. Kivuito, Chairman of the Electoral Commission of Kenya, |
| 10.00 | Meeting with Mr. Simon Osborn, Technical Adviser to K-DOP (Domestic Observers) |
| 11.00 | Meeting with Mr. Njoroge Mungai, Personal assistant to the Chairman of KANU, Rose Waruinga, Advocate, and Dr Josephine Ojambo, Physician |
| 12.00 | Meeting with Mr. David Wareme, Chairman, NARC |
| 13.00 | Meeting with Mr. Bjarte Tora, Director, and Mumbua Kioko, National Democratic Institute-Kenya |
| 15.00 | Departure for Aberdare Country Club, Nyeri |

25 December

Meeting with Long Term Observers in Nyeri
Coordination meetings with observer delegations from the Commonwealth, the African Union, Canada and Switzerland, plus K-DOP

26 December

Transfer to Outspan Hotel, Nyeri
Visits to polling stations and NARC and KANU offices, Nyeri Town
20.30 Meeting with Mwai Kibaki, NARC presidential candidate

27 December

05.30 Observe opening of polling stations in Nyeri Town
Visit polling stations in Mathira
Visit polling stations in Nyeri Town
19.00 Observe closure of polling stations in Nyeri Town and count

28 December

08.30 Leave for Nairobi
12.00 Debriefing with EU Chief Observer, Anders Wijkman MEP and the Core Team, with the JPA Delegation
Contacts with other election observation missions

Nairobi Serena Hotel

29 December

07.20 Departure of James Nicholson for Lagos

09.30 Meeting with George Saitoti, NARC parliamentary candidate and former minister
11.00 EU Election Observation Mission Press Conference, with Anders Wijkman, Baroness Nicholson and Graham Elson, Deputy Chief Observer
13.00 Lunch with Dr Sally Kosgei, Head of the Civil Service
14.40 Meeting with Uhuru Kenyatta, KANU presidential candidate
17.00 Meetings with Kenyan writers, journalists and women's organisation representatives

23.00 Departure of Baroness Nicholson for London
23.50 Departure of Michael Wood for Brussels

30 December

14.00 - 17.00 Full debriefing with Short Term Observers

31 December

23.50 Departure of Glyn Ford for Brussels

PARLEMENT EUROPEEN



ACP-EU JOINT PARLIAMENTARY ASSEMBLY



TWO NEW DELEGATIONS OF INTERNATIONAL OBSERVERS AFRICANS AND EUROPEANS TOGETHER LOOK AT KENYA'S ELECTIONS

Eight elected Members of Parliament from African and European countries have arrived in Kenya to observe the elections of 27 December. They will form two different delegations - the European Parliament Delegation and the ACP-EU Joint Parliamentary Assembly Delegation.

The European Parliament, as the elected parliamentary body of the European Union, has a prominent role in electoral observation, given its democratic legitimacy and specific expertise, and thus raises the political profile of the EU Election Observation Mission, whose Head is himself a Member of the European Parliament. The European Parliament Head of Delegation is Emma, Baroness Nicholson, MEP; its other members are Glyn Ford, MEP and Jim Nicholson, MEP.

The Joint Parliamentary Assembly is the parliamentary body established under the Cotonou Agreement which established a partnership between African, Caribbean and Pacific states (the ACP) and the European Union. This delegation has five members, three from African countries and two from the European Parliament. The co-Heads of Delegation are Beatrice Kiraso, MP, from Uganda, and Fode Sylla, MEP. The other members are A.M. Badri, MP, from the Sudan, H. Zembere, MP, from Malawi and Nelly Maes, MEP. This delegation will be working in close cooperation with the EUEOM.

As politicians themselves, they are in Kenya to look at the overall political picture, particularly of course at the elections, which are a vital part of the development of democracy and respect for human rights and the rule of law, a fundamental part of the Cotonou Agreement, but also to help further strengthen relations between Kenya, its ACP colleagues, and the European Union, for economic and social progress as well as political development.

For election day, they will be concentrating on particular areas - Central Province for the European Parliament Delegation and Rift Valley Province for the JPA Delegation.

These elections have been identified by both parliamentary bodies as being of particular significance: for Kenya itself, where President Moi is standing down after 24 years in office; for Africa where they may add to recent encouraging examples of democratic change, as in Ghana and Senegal; and for the European Union, linked ever more closely with its African, Caribbean and Pacific partners.

ENDS 23.12.02 16.00 hours Nairobi