

**Supreme Court August 28-29, 2017**  
**The Registrar's Scrutiny Report: What You Need to Know**

There is a serious lack of consistency in the election results forms, Forms 34A, 34B and 34C. The Court-ordered scrutiny established significant doubt in the legitimacy of the forms and the data contained therein.

The Court Order also called for scrutiny of the electronic results transmission server, for which the petitioner protested there was only partial access. This is an analysis of the form scrutiny only.

**What did the Court Order Say?**

On August 28<sup>th</sup>, the Supreme Court of Kenya issued an Order related to the scrutiny and verification of Forms 34A, 34B and 34C. Specifically, the Order granted read-only access to:

- Certified copies of the original (hard copy) Forms 34A, 34B and 34C
- Forms 34A, 34B and 34C (hard copy) from each of the 40,883 polling stations
- The scanned and transmitted copies (photos) of all Forms 34A and 34B

This Order allowed the petitioners to investigate the forms and verify whether or not they were genuine.

**Logistics**

**Who was involved?**

The Registrar of the Supreme Court, Esther Nyaiyaki, was responsible for supervising the scrutiny. With the parties' agreement, Nyaiyaki organized those involved into two teams: one team scrutinized the forms, and the other team investigated the server. Each party was entitled to two agents for each task, for a total of four agents each. The Judiciary also provided staff to assist with the scrutiny.

**Where did it take place?**

The scrutiny of the forms took place at Milimani Law Court's Cermonial Hall, and the ICT exercise was conducted at the IEBC's offices.

**What was delivered to Milimani Law Court?**

The IEBC delivered:

- 41,451 Forms 34A (from 40,883 total polling stations)<sup>1</sup>
- 291 Forms 34B (from 292 total constituencies)<sup>2</sup>
- 1 Form 34C

**How were the forms secured?**

The Judiciary liaised with the "relevant security agency" to ensure that all forms were guarded and stored in a secure location.

**The Timeline**

- Court Order issued: August 28<sup>th</sup>
- IEBC delivered all forms to Milimani Law Court at 6:00 pm, August 28<sup>th</sup>
- Forms were handed over to parties at 10:37pm, August 28<sup>th</sup>
- Scrutiny concluded at 9:30am on August 29<sup>th</sup>
- Scanned copies of forms (photos) were handed over to Petitioners at 11:00am on August 29<sup>th</sup>. These scans were the ones electronically transmitted to the IEBC from the polling station level.
- IEBC handed over time logs showing when forms were transmitted at 1:05pm on August 29<sup>th</sup>.

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<sup>1</sup> There are only 40,883 Forms 34A so the total of 41,451 forms requires explanation.

<sup>2</sup> There was no Form 34B from the prisons, because the IEBC said prison results were contained in the Forms 34B for the constituencies in which the prisons were located.

The final report on the scrutiny was given to the Court on the evening of August 29<sup>th</sup>.

### **How it Worked**

Petitioners were interested in distinguishing original forms from fraudulent forms. In order to do this, they checked forms for:

- The presence of a watermark
- The colour of the form
- Serialization
- Microtext
- X10 Magnification
- The column for comments on the forms
- The format of the forms
- Anti-copy features

They also checked forms for various other indicators, including IEBC stamps and signatures and agents' signatures.

### **Findings**

#### **Form 34C**

Form 34C shows the tally of all constituency level results.

The Form 34C did not have a watermark. It also lacked a serial number. Petitioners noted that the form looked like a photocopy. Representatives of the Third Respondent (Uhuru Kenyatta) noted that the form was indeed a copy of the original.

#### **Form 34B**

Forms 34B show results at the constituency level. There are a total of 291 constituencies, including the diaspora. Sometimes, the prisons are also considered to be a constituency. In this case, however, the IEBC submitted 291 Forms 34B only, because it said that the prison results were included in the results for the constituencies in which they are located.

The Registrar released figures related to the results of the scrutiny of Forms 34B. These have been totaled and tabulated below. It is worth noting that it is unclear how many total Forms 34B were scrutinized. As is clear in the table above, there are varying totals. Since only 291 Forms 34B were delivered and scrutinized, the gaps warrants an explanation.

<b>Indicator</b>	<b>Number of Forms</b>	<b>Percentage</b>
Forms bore a watermark	236	81.1%
Forms without a watermark	56	19.2%
<b>Total Forms with and without watermarks</b>	<b>292</b>	
Forms lacked the Returning Officer's (RO's) signature	5	1.7%
Forms included the RO's signature	281	96.6%
<b>Totals Forms with and without RO signature</b>	<b>286</b>	
Forms included RO signature and IEBC stamp	225	77.3%
Forms lacked the RO's signature but included an IEBC stamp	2	0.7%
Forms lacked a serial number	31	10.7%
Forms included a serial number	261	89.7%
<b>Total Forms with and without serial numbers</b>	<b>292</b>	
Forms signed by agents	260	89.3%
Forms not signed by agents	32	11.0%

<b>Total Forms with and without agent signatures</b>	<b>292</b>	
Forms in which the “Hand Over” section was not filled in <sup>3</sup>	189	64.9%
Forms in which the “Hand Over” section had been filled in	103	35.4%
<b>Total Forms with and without filled in “Hand Over” sections</b>	<b>292</b>	
Forms in which the “Take Over” section had not been filled in <sup>4</sup>	287	98.6%
Forms in which the “Take Over” section had been filled in	5	1.7%
<b>Total Forms with and without filled-in “Take Over” sections</b>	<b>292</b>	

### Form 34A

Forms 34A show results from individual polling stations. There were a total of 40,883 polling stations in the 2017 election.

Petitioners scrutinized a sample of 4,120 Forms 34A (10.1 percent of all forms) from 5 counties. Their findings included:

- Some forms were carbon copies.
- Some original Forms 34A did not include IEBC stamps.
- Some Forms 34A were scanned copies, which had stamps. Others were photocopies.
- Some forms did not include IEBC signatures.

The Registrar’s report also described her own observations, which included the following:

- Forms 34A from Mander West were not among the forms originally submitted. These were delivered later, after they were requested.
- There were ten forms labeled “illegible.” The IEBC said the originals were unavailable because they were locked in ballot boxes.
- The Form 34A for Mvita Constituency was for Member of National Assembly results. The IEBC brought the correct form after a request was made.
- Certain Forms 34A appeared to have been duplicated.
- Certain Forms 34A appeared to be carbon copies.
- Certain Forms 34A appeared to be photocopies.
- Some Forms 34A had no stamps and no signatures.

The IEBC was also ordered to hand over the photos of the forms that had been electronically transmitted from all the polling stations. These scanned and transmitted forms were delivered on a hard drive to the interested parties at 11:00am on August 29<sup>th</sup>. The findings of the scrutiny of these forms were not included in the Registrar’s report.

### Significance of Findings

Overall, the scrutiny casts significant doubt on the validity of the results forms used to tally the presidential result. The forms used were not standardized. For instance, some had watermarks while others did not. Some bore serial numbers; others did not. Given that all forms were allegedly printed in a way that ensured consistency, the widespread discrepancies require explanation.

<sup>3</sup> The Hand Over section on Form 34B is meant to indicate the details related to the handing over of Forms 34A from polling stations’ presiding officers to the Constituency Returning Officer. It includes the number of Forms 34A handed over, the details and signature of the Constituency Returning Officer and the time and date.

<sup>4</sup> The Take Over section on Form 34B is meant to indicate the details related to the handing over of Form 34B from the Constituency Returning Officer to the Chair of the IEBC. It includes the number of Forms 34A handed over, the details and signature of the IEBC Chair and the time and date.

If they were in fact all printed to the same standard, what explains the inconsistencies?  
If they were not all printed to the same standard, why was this the case?

The forms were also handled inconsistently by the IEBC, suggesting a lack of uniform, structured training and/or disregard for instructions.

Finally, the Registrar's report lacks clarity with regard to the total number of forms that were made available for scrutiny. What explains the 568 extra Forms 34A that the IEBC handed over? Why does the Registrar's report suggest that there were either more or less than 291 constituency-level Forms 34B available for analysis?