



Pre-election Statement ahead of the 8 August General Election

Based on more than one year of election-related observation and analysis, the Kura Yangu Sauti Yangu (KYSY) coalition presents this pre-election statement to highlight key issues and concerns.

Overall, KYSY notes a pre-election period that has been marked by a lack of respect for constitutional standards of integrity, public participation, public expression and voter sovereignty. Many of these problems were evident in 2013, and there is a disappointing lack of progress in addressing them:-

Election Day Issues

- 1. Freedom of Movement:** The Constitution guarantees every person freedom of movement and peaceful assembly. While it is reasonable that non-accredited persons cannot remain inside the polling station after voting, it is unacceptable to bar voters from congregating outside to witness the announcement of polling station results and to scrutinize the written record of results, which must be posted at the polling stations.
- 2. Security and Violence:** The recent killing of the IEBC's Acting Director of ICT, Chris Msando, has cast a grave pall over election preparations. This happened against a general context of increased violence around the country including between security forces and citizens. Additionally, the Lamu curfew, and security operations in the North Rift could depress voter turnout.
- 3. The Register of Voters:** Evidence suggests that multiple registers are in use:
 - Regulations state that voters may be identified in the copy register and not in the biometric list, although both should be identical.
 - The biometric list given to KPMG for the audit inexplicably contained 1,162 more records than the biographic list.
 - The number of registered voters recorded in the IEBC's list of presidential ballot papers per polling centre is 2,423 voters larger than the certified list.

The IEBC's decision that clerks will not be permitted to open the copy register once they have voted leaves no recourse for those who are not in the biometric list, nor for the situation in which the voter identification technology malfunctions or fails.

A lack of clarity surrounds the use of the so-called "green book," which was used in the 2016-2017 mass voter registration processes, and the IEBC has failed to address public concerns about it.

KPMG's audit of the Register of Voters revealed a wide range of problems with data in the Register, and it remains unclear how the IEBC will address these issues on Election Day.

Results Counting, Tallying and Announcement Issues

- 1. Complementary Mechanisms:** The lack of regulations for the use of complementary mechanisms in case of the failure of the electronic results transmission system leaves a dangerous gap. This risks leading to widespread confusion and chaos around results counting and announcement and must immediately be publicly addressed.
- 2. Disregarding Polling Station Results.** The regulations allowing the IEBC to disregard results from any polling station do not target the primary proof of ballot stuffing – i.e. voter turnout exceeding 100 percent. Correct calculation depends on a comparison between the number of total votes cast and the number of registered voters at a polling station.
- 3. Definition of votes cast:** In determining the winner of the presidential contest, Article 138(4) provides that the winner must receive more than half of all the votes cast. There is no clarity regarding how the Commission will interpret this provision given the Supreme Court's 2013 ruling that only valid votes should count.
- 4. Counting, Tallying and Announcement of Results:** The IEBC recent explanation how votes will be counted and announced, did not mention the legally required posting of results forms at polling stations. Voters have a right to scrutinize the results of their votes, and the IEBC must clarify that it will comply with this law.

The lack of a space on Form 34B showing the total constituency tally is a serious omission, making it impossible to know the constituency-level totals for each office. Since the judiciary has ruled that presidential results are final as announced at the constituency level, tally sheets should include totals.

The IEBC has barred cameras and phones from inside polling stations, including by accredited media. The public has a constitutional right to record the electoral process as long as it does not violate the secrecy of the vote. In particular, any member of the public has a right to take a photograph of the published results.

5. Extra ballot papers for presidential elections

Ballot papers printing lacked transparency, and there is anxiety about the need for 1,206,577 more ballots than registered voters (6.2% of the number of registered voters), especially because 256 polling centres have not been allocated any extra ballots. Moreover, some polling centres have more than six percent more ballots than necessary.

The IEBC has printed 12 Forms 34A (presidential results forms at the polling station level) per polling station. Multiple copies of the same form risk opening the door to the possibility of differing totals and lack of clarity around which of the twelve are legitimate.

Based on these findings, KYSY finds that the integrity and credibility of the pre-election period has been severely compromised and urgent action is necessary to restore confidence.

As Election Day approaches, we demand the following:

1. IEBC must affirm that it shall exercise its vested powers of securing and keeping order at polling stations through its presiding officers.
2. IEBC must make public, before election day, its deployment plan for security officers across the counties to inform Kenyans on what to expect at polling stations.
3. IEBC must make public all polling stations which it has identified as having network challenges and announce the coordinates of all 40,883 polling stations.
4. IEBC must explain to Kenyans what complementary mechanism it will use on if voters cannot be identified in the biometric system.
5. The IEBC must also immediately explain the complementary mechanism to be used if electronic results transmission fails in line with the finality of results at the constituency level.
6. IEBC must assure the public that the constitutional right to participate in the elections will be preserved, including through recording and photographing the process while respecting vote secrecy.
7. IEBC must confirm that it will adhere to the law and "affix a copy of the declaration of the results ... accessible to the public at the polling station."
8. IEBC must publicly explain irregularities in the Voters Register such as the unexplained increase in the number of registered voters after certification of a final Register. The Commission must assure Kenyans of a clean Register of Voters before election day.
9. IEBC must explain the inconsistencies in the list of presidential ballots per polling centre, including the difference in total registered voters, the lack of extra ballots in some centres, and the erroneous numbers of registered voters per centre.
10. Acting Cabinet Secretary of the Ministry of Interior must confirm to Kenyans that he and his officers shall not usurp the powers vested in the IEBC to secure and keep order at the polling stations.
11. Acting CS of the Interior must assure Kenyans that there will be no selective prohibition of peaceful protests in opposition strongholds, which is in clear violation of the right to peacefully assemble and demonstrate.
12. Electoral offenders including IEBC staff should be pursued to the full extent of the law.

We strongly urge the IEBC and other authorities to immediately address the issues raised here and protect the integrity of the remainder of the process to ensure a free, fair and credible election.

About Us:

The KYSY coalition, a citizen movement for credible elections spearheaded by like-minded civil society organisations, is establishing an Election Centre (EC) at the Kenya Human Rights Commission, which will receive and process member organizations' election observations.

The Elections Center will be open to the public and the media

Open: 8 August through 11 August, from 07:00 to 18:00.

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