



12TH OCTOBER 2017

Memorandum on Preparation by IEBC for the Fresh Presidential Election

About TISA

The Institute for Social Accountability (TISA) is a civil society organization committed towards the achievement of sound policy and good governance in local development, to uplift livelihoods of, especially, the poor and marginalized in Kenya.

Preamble

We prepare this memorandum on the occasion of the consultative meeting with respect to the forthcoming elections and observe that; Public participation is inclusive process is aimed at deepening democracy through both formal and informal participatory mechanisms. Public participation enables government to take on board citizen concerns, needs and values, with the overall goal of better decisions that are supported by the public. Public participation provides for involvement, communication and reciprocal influence between citizen and state. **We are however concerned that the IEBC has already pre-determined the outcome of this and other deliberations for the reasons stated within this memorandum.**

Context

The Kenyan Supreme Court on the 1st of September 2017, annulled the Presidential elections on the grounds that the IEBC did not conduct the 8th August 2017 presidential election in conformity with the Constitution and electoral law. A much discredited IEBC is now entrusted with finding the pathway to the conclusion of the process which must be based on “compliance with the law every step of the way.” However, there are matters of grave concern in the manner with which the IEBC is handling the process;

Supreme Court directions: As part of its ruling, the Supreme Court gave several orders to be actioned by the IEBC. However, instead of trying to comply with the orders, Parliament passed the Elections Amendment Act 2017, which seeks to legitimise the illegalities and irregularities committed by the IEBC and thereby circumvent the court ruling. IEBC stands to benefits from illegal and unconstitutional amendment which effectively erode the Bi-partisan consensus and negate the Supreme Court ruling.

Minimum reforms: It is noteworthy that as determined by the Supreme Court, the IEBC handled the elections in a shambolic manner, subsequent to which NASA called for irreducible

minimums to which address gaps in the electoral process. These include, requirements on the procurement of election materials; transparent use of and access to ICT; replacement of irredeemable personnel who abetted electoral fraud; gazettement of polling stations and live media coverage of results declaration at the 290 constituency tallying centres in the same manner as done at the national tallying centre.

However, instead of conducting itself in an open and transparent manner, IEBC has embroiled itself in a game of cat and mouse hiding behind obscure communication which has come to characterise the commissions efforts to mask its real intentions. IEBC has once again demonstrated its contempt for rule of law through the charade of incorporating other presidential candidates to participate in an election that is two weeks away. Can IEBC claim to have afforded the presidential aspirants a level playing ground if jubilee has been campaigning for the candidate since for the past month?

Voter Education: Following the outstanding number of rejected votes at 2% in the August 8th General Elections which was characterised by lack of voter education resulting in ‘confusion’ on E-day and consequently leading to some voters failing to cast their ballot. It is incumbent upon the Commission as per Article 88 (4), (g) of the Constitution of Kenya (2010), to prevent any possible similar occurrences in the fresh presidential elections by providing appropriate voter education prior to the fresh election.

Voter Register: Following the Independent Audit of the register of voters Report released by IEBC which indicated that 2.9 out of 19.6 million contained inaccuracies including inconsistencies in the date of birth and gender it is paramount to note that “even after the audit undertaken by KPMG the Register of Voters still remains with a lot of errors, inconsistencies and as a result cannot be termed to be accurate. There are many erroneous records in the ID/Passport field which is critical in identifying Voters¹.” as per an the assessment conducted by ELOG. It is in light of the above IEBC needs to clarify what strategies it has put in place to address the challenge of double/multiple voter registration.

Conduct of the IEBC: The Supreme court issued a stinging condemnation of IEBCs handling of the election. The conduct and manner of the IEBC in the aftermath of the ruling demonstrates clearly that there can be no credible election without the removal of the present Chair, the CEO and implicated commissioners. IEBC appears to have little intend of instituting the needed reforms, and we must conclude that the proposed election is a sham orchestrated to put Uhuru Kenyatta back in office, by any means necessary.

Proposal: It is our reasonable demand that the IEBC call-off the forthcoming election and invoke sections of the Constitution that will allow time for dialogue, reform and consensus building. It is our view that Chair and CEO should to resign as part of the process of restoring credibility to the IEBC.

¹ ELOG. 2017. *A Preliminary Report on Voters Register Audit*. ELOG.

Annex:

Supreme Court orders to IEBC

(a) avail all the material including electronic documents, devices and equipment for the presidential election within 48 hours;

(b) Immediately upon the filing of the petition, the 1st respondent do produce, avail and allow access for purposes of inspection of all the logs of any and all servers hosted by and/or on behalf of the 1st respondent in respect of the presidential election within 48 hours;

(c) A specific order for scrutiny of the rejected and spoiled votes;

(d) A declaration that the rejected and spoiled votes count toward the total votes cast and in the computation of the final tally of the Presidential Election;

(e) An order for scrutiny and audit of all the returns of the presidential election including but not limited to Forms 34A, 34B and 34C;

(f) An order for scrutiny and audit of the system and technology used by the 1st respondent in the presidential election including but not limited to the KIEMS Kits, the Server(s); website/portal;

(g) A declaration that the non-compliance, irregularities and improprieties in the presidential election were substantial and significant that they affected the result thereof;

(h) A declaration that all the votes affected by each and all the irregularities are invalid and should be struck off the from the final tally and computation of the presidential election;