



C/O Kenya Human Rights Commission  
Gitanga Road, opposite Valley Arcade  
P.O. Box 41079 - 00100  
Nairobi, GPO Kenya  
Tel: +254 - 020 - 2044545/2106763  
Office Cell: 0733 629034, 0722 264497  
Email: admin@khrc.or.ke  
Website: www.khrc.or.ke

## **KURA YANGU SAUTI YANGU PRESS STATEMENT ON THE DELIBERATIONS OF THE JOINT SELECT COMMITTEE**

Except for the 2002 General Elections, all elections in Kenya since the first multi-party elections in 1992 have either been violent or so badly managed as to threaten to turn violent. The abiding nature of this instability indicates the problem is institutional and structural rather than managerial and transitory.

The primary problem is that incumbents lack interest in an honest election. This makes it easy to corrupt the electoral management body (EMB) and use it to favour preferred candidates. If this is not addressed, the credibility and integrity of elections in Kenya will never be guaranteed. Thus the replacement of the current Commissioners of the Independent Elections and Boundaries Commission (IEBC) is necessary but not sufficient to ensure credible and peaceful elections in the future. Personnel changes alone is a road well-travelled and will NOT secure the country's next elections.

From 1992 on, no-one has been held accountable for electoral crimes. The Electoral Commission of Kenya (ECK) reforms of 1997 under the Inter-Parties Parliamentary Group (IPPG), the appointment of new Commissioners between 2002 and 2006 and the dismantling of the ECK and its replacement - first by the Interim Independent Electoral Commission (IIEC) and then the IEBC - has not changed fundamental flaws of the electoral system in Kenya. This suggests additional changes to the electoral system without political commitment to addressing the impunity embedded in the politics will not secure a credible electoral system.

The IEBC's corruption and impunity become clear, first, from the recently-disclosed corruption of the IIEC and, second, from the spectacular failures of the IEBC in the 2013 General Elections. No less than a year from the ECK's disbandment, its successor, the IIEC, was mired in even worse corruption. The criminal trial of Smith and Ouzman officials, a British company, revealed the company paid just over GBP349,0500 as bribes or 'chicken' to staff and IIEC Commissioners to secure printing contracts. The company also entertained IIEC officials - including the Chair Isaack Hassan - by paying their expenses and information on rival bids was leaked to Smith and Ouzman.

Matters only got worse in 2013, as revealed in the decision of the Public Procurement Appeals Tribunal, the Auditor-General's Special Audit on the Procurement of Electronic Voting Devices for the 2013 General Election and the Public Accounts Committee's Special Audit Report of June 2014. All showed that the IEBC manipulated a tender to the benefit of Face Technologies, a South African company.

There is thus a mass of evidence that Kenyan procurement and electoral laws have been violated. There must be a process of individual accountability for these breaches. Yet the Joint Select Committee has opted to negotiate the exit of the current IEBC Commissioners. Under the

Co-Conveners

1

Constitution, nothing prevents a commissioner from resigning ahead of the period of appointment. But then they do not get any remuneration for the unfinished period—as suggested by the Select Committee. The recommended payments to the IECB commissioners are unconstitutional, and entrench impunity by rewarding wrong-doing.

- **We therefore demand that recommendations from the three reports mentioned above that would lead to prosecutions of any and all individuals found culpable be pursued.**
- **The IECB secretariat itself is also demonstrably extensively infected with partisan and corrupt relationships with the commissioners and outside political interests. Therefore the process of exacting accountability cannot be limited to commissioners but must include leading secretariat staff who managed egregious systemic failures and lapses in integrity.**
- **We further demand that the IECB Commissioners be cut down to the constitutional minimum of three based on technical expertise only.**

Related, the mechanism the Select Committee has settled on to appoint new IECB Commissioners is dominated by faith-based organisations (FBOs). Whereas FBOs played a role in efforts leading to the Select Committee establishment, for various historical reasons, they do not sufficiently embody public consensus on any matter. The FBO leadership is not necessarily above the country's partisan interests and the idea of an independent selection panel will perish the moment it is dominated by any one sector.

- **We therefore demand that the selection of the next IECB Commissioners be done by a multi-stakeholder selection committee. The selection committee should include nominees of parliamentary political parties chosen through the Parliamentary Service Commission (PSC), representatives of non-state actors and the private sector.**

The IECB has never settled on a final register of voters. The recommendation that the register should be audited and cleaned is thus erroneous and futile.

- **We therefore recommend that there should be fresh registration of voters once the new IECB is established.**

Oddly, the Select Committee failed to address the skewed and selective process by which ID cards are issued despite public outcry.

- **We therefore recommend that, as part of the extended mandate of the Select Committee, there should be a term of reference requiring an in-depth investigation of the problems related to accessing ID cards.**

Citizens are also concerned about the actual management of elections, including the use of technologies in the processes of registration of voters, and the counting, tallying and transmission of results.

- While, in principle, we welcome the use of technologies, there should be stakeholder involvement in the selection of the technologies and only technologies that promote the transparency and verifiability of elections should be allowed.
- We further recommend that the results announced at the polling station should be final and cannot be changed except by an order of the court. An audio-visual record of the result announced must be kept and a screen shot of the results given to the media and all parties participating in the election in real-time

Finally, it is clear the Select Committee was a narrowly-constructed mechanism to address a limited set of issues to do with the removal and replacement of the current IEBC commissioners. While the exclusive nature of the Select Committee undermined constitutionally required public participation, a large number of issues important for the political stability of the country in relation to the 2017 General Elections were outside its mandate and were therefore not addressed. These include the political polarisation and embedded impunity that continue to plague the country, the on-going risk of political violence and the unimplemented two-thirds gender rule. Also there are issues relating to the internal frailty of the judiciary which is an elections dispute resolution mechanism and overall leadership and coordination among public institutions entrusted with the management of elections.

Kura Yangu Sauti Yangu has raised these issues on many previous occasions and remains convinced that there is still need for a structured dialogue on these issues. While the Select Committee's achievements on the IEBC constitute progress, we must come together to discuss those pending issues.

- We, therefore, call upon the political leadership to convene a multi-stakeholder dialogue process on the General Elections 2017.

Kura Yangu ,Sauti Yangu is a citizen movement spearheaded by a number of like-minded civil society organizations (Kenya Human Rights Commission, Independent Medico-Legal Unit, Constitution and Reforms Education Consortium, Inform Action, the Africa Centre for Open Governance, the Civil Society Organization Reference Group, Inuka Trust, Katiba Institute, and the Kenyan Section for International Commission of Jurists) who have come together to proactively support Kenya's preparations for the 2017 elections with a view to ensuring that the country minimizes the risks related to dysfunctional electoral systems and practices which the country has experienced in the recent past.

The Secretariat,  
Kura Yangu Sauti Yangu - Coalition  
Kenya Human Rights Commission [KHRC]  
Opposite Valley Arcade Shopping Center, Gitanga Road  
P. O. Box 41079 - 00100, Nairobi  
Website: [www.khrc.or.ke](http://www.khrc.or.ke)  
Media Inquiries: [mmmedi@khrc.or.ke](mailto:mmmedi@khrc.or.ke) / 0721724264

3

#### Co-Conveners