



### KURA YANGU SAUTI YANGU PRESS STATEMENT.

Monday, September 4, 2017

On Friday, the Supreme Court of Kenya spoke unequivocally for the Constitution and the rule of law. Its judgment in the presidential election petition is an unprecedented and courageous statement of justice that will continue to reverberate across Africa and the world. We applaud the courageous decision of the majority of the judges and understand the two dissenting minority opinions.

President Uhuru Kenyatta's subsequent denigration of the Supreme Court in the aftermath of its decision, which has gone as far as referring to the judges as crooks, and threatening to "fix them" after 60 days, is unfortunate in the extreme and must be condemned as an attempt to seat impunity within our constitutional democracy. Leaders in the Jubilee Party have taken his cue to also insult, threaten and disrespect the Judiciary. These statements signal a tendency toward authoritarian rule that must be resisted.

As the country prepares to conduct fresh elections, the Kenyan people are entitled to a full disclosure of what happened to their votes. The full reasoning of the Supreme Court's judgment will be available in the coming days, and it should direct many of the remedial steps that the Independent Electoral and Boundaries Commission must undertake to guarantee that the fresh election ordered does not suffer a fate similar to its predecessors.

Kura Yangu Sauti Yangu's initial observations about anomalies in the conduct of the elections have been vindicated. Numerous other problems were observed with respect to the August 8, 2017 elections that were not considered by the Supreme Court.

We note with deep concern the repeated failure by the IEBC to fully comply with the Supreme Court's orders to provide access to aspects of the technology employed in the elections. It is imperative that a full forensic audit of the technology and other systems be conducted before we head into another election in 60 days.

Going forward, we demand full transparency in the management of the election, including information and communication technology. Parties and public-spirited interested parties must have shadow access to the information technology in the fresh election ordered by the court. The IEBC must make their meetings open to the public and the media to lay bare the basis of their decisions; and all procurement purchases must be transparent.

The IEBC must clarify what the complementary mechanism will be used should a situation arise in which the electronic results transmission system fails. This mechanism must be the result of public consultations with interested parties. Additionally, the IEBC must streamline the results transmission system so that the scanned Forms 34A and 34B are simultaneously sent to constituency tallying centres, the national tallying centre, and to the public portal. In this way, the public will be able to view what the IEBC sees and identify gaps in real time.

We note that the IEBC has not addressed all the issues raised in the audit of the Register of Voters. On average, there are potentially 246,790 missing records in the constituency registers. Another 58,364 voters were added to the total number after the KPMG audit, and a further 25,638 voters were added to the roll between certification and the announcement of presidential results. These numerical disagreements do not inspire confidence in the Register or the principle of one-(wo)man, one vote.

#### Co-Conveners



More importantly, we demand accountability for the needless killing of 28 people and incidents of sexual violence after the IEBC's declaration of results. At the minimum, the Independent Policing Oversight Authority owes the country a progress report on its investigations.

Finally, the role of observers – both local and international – in the elections has come into sharp focus. An urgent review of the process for the appointment of international observers with a history of crimes against humanity, fiddling with elections or who have obvious geopolitical and partisan interests is necessary. It is noteworthy that domestic observers were the ones who identified the issues that were at the heart of the August 8, 2017 elections, and international observers' willingness to accept and dismiss those issues as negligible exposes the weaknesses in the standards they use to assess electoral integrity.

Civil society will use its findings from the past several years of election observation and analysis to develop its own standards of electoral integrity. We will make use of these standards in all future elections. In future elections, international observers should only be welcome if their work supports the attainment of these standards.

Although we welcome the IEBC's invitation to the Director of Public Prosecutions to commence investigations into criminality around the election, we would like to express our deep concern about whether the IEBC as currently constituted, particularly with the current Chair and CEO and some of the staff at the helm, can be trusted to carry out a free and fair election. This is a matter that stakeholders need to discuss and resolve urgently. Also, we insist that a full and speedy inquiry into what went wrong is necessary, and immediate corrective action must urgently follow. In the days to come, we shall be convening public meetings at which we ask Kenyans to speak openly about what went right and what did not work during the elections. Specifically, we are interested in incidents of voters who registered but were frustrated by the poor management of the Register, evident in their details missing from the biometric voter identification kits, being allocated to polling stations far away from where they live, and mismatches between the information they supplied and what was available on record.

We invite all voters who experienced difficulties in voting to come forward by contacting us through the email address [kurayangu@kysy.co.ke](mailto:kurayangu@kysy.co.ke), and via WhatsApp and short text messages through 0715 500 706.

Our Constitution establishes a standard by which free and fair elections must be held: that they shall be by secret ballot; that they shall be free from violence, intimidation, improper influence or corruption; that they shall be conducted by an independent body; that they shall be transparent; and that they shall be administered in an impartial, neutral, efficient, accurate and accountable manner. Anything short of that would be an attempt to establish a government by unconstitutional means: a coup d'état.

KYSY will now seek audience with the IEBC for a clarification on how they intend to address all the concerns that have arisen from this election, and to ensure that the fresh election is free, fair and credible.

Also our monitoring will continue and we shall not hesitate to seek appropriate redress should the IEBC fail to address the prevailing concerns ahead of the election.

**ENDS**

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