



IGI- INTEGRITY KENYA



BARE-KNUCKLE CONTEST

Harrowing Incidents Overshadowing Kenya's 2017 General Elections

PRELIMINARY (DRAFT) REPORT

A. Before Elections

1. The Election preparation period was marred by ugly incidents of intimidation, especially from State agencies which culminated in the abrupt disappearance, torture and murder of Christopher Msando, the IT Manager at the Independent Electoral and Boundaries Commission. Opposition and human rights actors quickly pointed accusing fingers at the State security agents hell bent on compromising the integrity of the electoral process. See <http://www.telegraph.co.uk/news/2017/07/31/kenyan-voting-official-found-dead-opposition-cries-foul-ahead/>. Mr Msando was crucially tasked with the management of computer security systems for voter registration, voter identification, results tallying and electronic transmission. He had made a report to the police that his life was in danger, a pointer to the risks associated with the post he was holding at IEBC. US Ambassador Robert Godec and British High Commissioner Nic Hailey condemned the killing and said they had requested the Kenyan government to allow America's Federal Bureau of Investigation and Britain's Scotland Yard to be drafted into the investigation to unmask the killers of the election technology manager. The Government declined their assistance and up to now no one has been charged with the disappearance and murder of Mr. Msando, a fact CSOs cite that links Msando's death to the controversial results in the elections.
2. This was closely followed by the freezing of the accounts of a local NGO linked to the Opposition Leader's daughter Rosemary Odinga. The claims made by Government agents on why the accounts were frozen seemed to contradict any other information in the public domain. For instance, the government claimed the NGO was not utilizing funds for the purpose for which it was registered yet the organization is NOT registered in Kenya – it has just applied for registration which is yet to be granted by the same government. See <https://www.standardmedia.co.ke/business/article/2001250019/government-freezes-bank-account-of-ngo-associated-with-raila-s-daughter> and <http://www.kenyans.co.ke/news/21409-nasa-leader-raila-odinga-defends-rosemary-odinga-after-her-accounts-were-frozen>. The Nairobi City Governor Evans Kidero, a close ally and financier of the Opposition Leader Raila Odinga was the next target. His charity trust known as Evans Kidero Foundation had its registration revoked and accounts frozen for accusations relating to conflict of interest since a number of the organization's trustees were civil servants. See details at www.standardmedia.co.ke/article/2001230393/governor-evans-kidero-foundation-permit-revoked. Kalonzo Musyoka, the running mate of Raila Odinga was next on the line. His family NGO, Kalonzo Musyoka Foundation was accused of embezzlement of donors' funds and its accounts frozen by the State. See details at <http://www.nation.co.ke/news/Kalonzo-Musyoka-Foundation-accounts-frozen/1056-3911684-d2x3p7/index.html>. In our observation, for a Government that has been in office for five years, it defeats logic that all the 'unlawful' activities of organizations linked to Opposition kingpins would be unveiled all at the same time a few days to a hotly contested poll. We are forced therefore to infer that all these actions were clearly meant to cripple the Opposition financially and tilt the campaign in favour of Uhuru Kenyatta.

B.

During Elections

3. The much hyped Opposition presidential vote tallying centers became the targets of raids by hooded men who identified themselves as policemen, and went ahead to confiscate hard disks, vandalize computers and furniture and take away vital documents without any search warrant from the courts as required by law nor any explanation for their actions. The first attack was at the tallying center on Lenana Road in Nairobi's Kilimani area and the next was at the NASA tallying center in Runda estate. See these at <http://www.plive.co.ke/news/election-attack-nasa-tallying-centre-raided-by-flying-squad-id7133121.html> and <https://www.standardmedia.co.ke/ureport/story/2001250371/this-is-how-nasa-offices-look-after-they-were-vandalised-by-hooded-gunmen-pictures>. These criminal actions were seemingly meant to frustrate and disorganize the NASA team and make it impossible to track the election results that were trickling in at the time.
4. Similarly, NASA's foreign election experts were dramatically apprehended, hand-cuffed and deported four days to the General Elections. They were bundled into planes destined for their respective countries after hooded men gained entry into a NASA strategy office in Nairobi's Westlands area and carted away computers and laptops being used by the experts. State agencies later claimed that the four: Mr John Aristotle Philips (American), Mr Andreas Katsouris (Canadian) and two unnamed Ghanaians had abused their visa conditions. See <http://www.nation.co.ke/news/Foreigners-working-for-Nasa-face-deportation/1056-4046072-sul0dsz/index.html>. This is despite the fact that Jubilee Party's Presidential Campaign Secretariat was full of expatriates from other countries.
5. While at the National Tallying Center – Bomas, one strange occurrence that seemed to baffle observers is that from the point only about 100,000 votes had been counted, received and displayed the % for President Kenyatta stood at 54% or thereabouts and Odinga's stood at 44% or thereabouts. These percentages were strangely maintained even after 1M votes had been displayed. Even when the vote count hit 3M, the percentage remained constant. This went all the way until Kenyatta hit 8.4 M and Odinga 6.8M with their standing remaining at 54% Kenyatta and 44% Odinga. IT experts and statisticians similarly concurred that figures don't behave this way, usually. It would always be that when Kenyatta at 54% receives 80,000 votes from Thika, his stronghold, the % would shoot up considerably to say, 58% while Odinga's would drop to 41%. When Odinga gets 90,000 from Migori, his backyard, Kenyatta's rating may come to 50% while Odinga's rises to 48% or thereabouts. This didn't happen in the presidential results transmission process. It would be expected that when a batch of results was received continuously from Kenyatta's stronghold, his rating would rise to even 70% while Raila's dropped to 30%. Conversely, when results from Raila's stronghold would start trooping in continuously, you would expect him to hit 60% while Kenyatta is at 40% - this happens as varying figures for different candidates keep streaming in randomly tilting the scale either side at any given moment, even with small margins until the final tally! Moreover, we noticed that

throughout the night, on the screen at the national tallying center that was displaying the results, it would take approximately two whole hours for new results to stream in...yet we knew that results from polling stations should be streaming in every second, randomly. When we asked the CEO – IEBC why every batch of results was to take intervals of two hours to hit the screen, he said the system was slow, because the results coming in were too many – the explanation did not make sense. It created the impression of the results being received in some quarter, studied for two hours and released in the ‘right quantities’ (probably manipulated) to maintain the 54-44 equilibrium. This equilibrium would also in our analysis seem to have been artificially created to put in the minds of the people – condition them over time to accept one candidate as an obvious winner and the other as an automatic loser.

C. After Elections

6. The Kenya Human Rights Commission (KHRC) and the African Center for Open Governance (AfriCOg), headed by Prof. Makau Mutua, a Law don at the New York State University and Gladwell Otieno, former head of TI Kenya respectively were shut and their accounts frozen on Monday ostensibly because they were preparing to lodge a presidential petition in court appealing the authenticity of the presidential results. Trumped up charges were labeled against them – that they had been misusing donor funds and had been evading to pay taxes amounting to millions of shillings and that AfriCOg had been operating outside the law. KHRC was also accused of operating illegal bank accounts. The directors of these two reputable institutions were, until 16th August being sought by police for crimes that many believe are associated with their interest in presidential results petition. See <http://mobile.nation.co.ke/news/NGOs--We-were-shut-over-plan-to-contest-poll-result-in-court-/1950946-4059114-stnehv/index.html> and <https://www.standardmedia.co.ke/article/2001251462/khrc-says-move-to-delist-it-is-politically-motivated-as-ngo-board-bares-fangs-at-africog>.
7. Four days after the results were announced, NASA had not received the Presidential Results Declaration Forms (Forms 34A). We are in possession of their letter of complaint to IEBC wondering how they declared results and failed to avail the Polling Stations and Constituency Tallying Centers (Forms 34B) - original forms that support those results so declared. In response, IEBC CEO Ezra Chiloba admitted that indeed the forms are not available but would be submitted to NASA as soon as they are available (we are in possession of this response).
8. On Tuesday 15th August, three days after the final presidential results were announced, IEBC attempted to explain a bizarre occurrence, where results on its website were still going up, for some candidates and down for other presidential candidates. After receiving an avalanche of questions from observers, IEBC through the spokesman Andrew Limo, explained that these were not new results, but those already announced by the commission. However, he failed to explain why President Uhuru Kenyatta’s tally had hit 8,219,879 by Tuesday 3.00pm as compared to his

previous Friday's score of 8,203,290 while Raila Odinga's tally had reached 6,819,036 compared to Friday's 6,762,224 – all these coming up even with a final tally having been declared, certificate issued to the winner and results gazetted. Interestingly, those of five of the other six presidential candidates reduced, with only that of Thirdway Alliance of Kenya's Ekuru Aukot going up from 27,311 to 27,389. Mr Abduba Dida's dropped from 38,093 to 37,869, Cyrus Jirongo from 11,705 to 11,278, Joe Nyagah 42,259 to 38,004, Japheth Kaluyu from 16,482 to 11,771 and Michael Wainaina 13,257 to 8,868. It is difficult to explain how an officially declared result, properly entered into Form 34C and signed by the Returning Officer (IEBC Chairman) and Presidential Chief Agents could be increasing, or worse still reducing a number of days after the official declaration.

9. There is a seemingly wide spread pattern of discrepancies between IEBC's official results as recorded at the polling station in Form 34A and posted at the national tallying center and the results received by the political party agents, some of which our observers are in possession of. Our observers were instructed that once the Presiding Officer announces the results at the polling station and signs the form together with the Deputy Presiding Officer and the political party agents, the observers take photos of the signed Forms 34A using their mobile phones and post to the mission. Surprisingly, some of the results on arrival in Nairobi did not tally with what the Presiding Officer sent to IEBC. The common trend as seen in about 14 polling stations from different parts of the country is that Odinga's votes are reduced by a certain margin and Kenyatta's votes are increased by a certain number. So far I have not come across a case where Odinga's are increased while Kenyatta's are reduced. Of course that does not mean that such may not have happened. The difficulty with this situation is that both forms with varying results from the same polling station bear the same signatures!
10. On 15th Tuesday night, there was an ugly incident at the Jomo Kenyatta International Airport, where a Commissioner with the IEBC Dr. Roselyn Kwamboka Akombe was disembarked from a New York bound flight and detained the whole night by the airport security ostensibly on instructions from top security agencies. Akombe, my former college mate and a former student leader at the University of Nairobi, is considered to be a sobering voice at the commission and her abrupt trip to the US, where she had been working as an Under Secretary at the UN headquarters, prior to her engagement with IEBC was viewed with suspicion by Government functionaries as camouflaging her 'running away' and possibly on a mission to 'spill the beans'. This would probably explain the panic and her unlawful detention for hours being interrogated on her mission abroad. She was eventually allowed to travel on Wednesday morning after the intervention of diplomats and her colleagues at the IEBC. Dr. Akombe has since said she is not fleeing the country and indicated she would be back on Sunday.