



## International Governance Institute

*...building integrity in acquiring and exercising public duty ...*

THE CHAIRMAN,  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION,  
ANNIVERSARY TOWERS,  
UNIVERSITY WAY – NAIROBI.

October 10<sup>th</sup>, 2017

Dear Chairman,

**RE: IGI OBSERVATION REPORT AND RECOMMENDATIONS IN PREPARATION  
FOR OCTOBER 26<sup>TH</sup> 2017 PRESIDENTIAL POLL**

The above subject matter herein refers.

Owing to our participation in the August 8<sup>th</sup> 2017 Elections as Observers and having successfully participated in similar events in 2005 National Referendum, 2007 General Elections, 2010 National Referendum, 2013 General Elections and a number of other By-Elections in the intervening periods, we would like as an Election Observation Mission accredited by the IEBC to monitor Elections in 8 out of the 47 Counties on August 8<sup>th</sup>, to make the following recommendations towards the realization of a credible, free and fair Elections on October 26<sup>th</sup>, 2017:

- ❖ **Issue No.1.** Our Election Observers averred that since their presence and actions contribute immensely to the credibility of the electoral process, they do not find it plausible to sit and watch as Results Declaration Forms are handled in concealment while they are expected to report on the authenticity of the Election including the credibility of the results.

**Recommendation:** *Allow Election Observers, in addition to Party Agents to append signatures on results transmission forms (Forms 34As and 34Bs respectively) to add to the credibility of the process.*

- ❖ **Issue No.2.** Our Election Observers were disturbed by the absence of Party Agents in many areas and especially strongholds of political opponents, which is a recipe for the massive irregularities reported in these areas. For instance, in large parts of Samburu and Turkana Counties where more than 60% of the population is illiterate, it is the Presiding Officer who actually does the voting for such voters. In the absence of experienced and well trained Party Agents, the Presiding Officer can actually determine who wins which election in such areas.

**Recommendation:** *The Commission should compel both the Candidates and/or their political parties/alliances to present a full list of 40,833 Party Agents covering all the polling stations in the country, who must be well-trained and experienced in election matters and accredited by IEBC to aid in promoting the credibility of the electoral process.*

- ❖ **Issue No.3.** Upon the finding of the Supreme Court of Kenya that the August 8<sup>th</sup> 2017 Elections were not conducted in accordance with the Constitution, it is the considered opinion of our Observers that IEBC should have acted swiftly and firmly to clean its house of political party moles who bungled the election and assured the public that the Commission does not and will not condone malpractices orchestrated by its own staff on behalf of mischievous political actors. As a precedent, in April 2015, the President of Kenya ordered all officers in his government including Cabinet Secretaries who had been mentioned in a corruption investigation report, which was not complete at the time, to vacate office until they were cleared by investigative agencies; they all did. Mr. Kenyatta himself stepped aside as Deputy Prime Minister when he was mentioned as a suspect in the ICC case at The Hague. In the previous government of Mr. Mwai Kibaki, Hon. Amos Kimunya was asked to step aside as Finance Minister (Grand Regency scandal), Hon. Kiraitu Murungi as Constitutional Affairs Minister (Anglo Leasing scandal), the late Hon. George Saitoti as Education Minister (Goldenberg scandal), until investigations were complete.

**Recommendation:** *We do not see what is special about IEBC staff who have through premeditated criminal acts plunged the country into such a dangerous political crisis! The Commission should act expeditiously and identify Secretariat/operational staff whom the Commission (not political parties) suspects to have been responsible for the bungled August 8<sup>th</sup> Elections, suspend them forthwith and trigger investigations from respective agencies against the said staff and any other, acknowledging that it is extremely difficult for an officer to be investigated while he/she is substantively in office; they will frustrate investigators or point them in the wrong direction to defeat the purpose.*

- ❖ **Issue No. 4.** Our Observers are concerned that some Commission senior staff are feeding the political propaganda rumor mill being advanced by certain political operatives that the August 8<sup>th</sup> Elections were free and fair and that the Supreme Court decision was flawed and therefore has no bearing on the activities of the IEBC. Such ill-advised statements seem to embolden one side of the political divide to insist that the beleaguered staff stay on, and similarly embolden the other side to insist that unless they are removed, there will be no elections on October 26<sup>th</sup>. If indeed IEBC is independent as defined in law and practice, why would its CEO be publicly making statements that seem to support a partisan controversial political agenda on national TV?



**Recommendation:** *The Commission should in our humble view, restrain its staff including the embattled CEO, from issuing statements and publicly making comments to the effect that the August 8<sup>th</sup> Election was free and fair, despite all the evidence to the contrary in the public domain. This continues to send a wrong signal that they're at the IEBC as merchants of impunity, they are uncontrollable, untouchable, IEBC is not independent and the October 26<sup>th</sup> Elections will still follow the same path.*

- ❖ **Issue No. 5.** In the August 8<sup>th</sup> Elections, IEBC stopped our monitors from taking photos/videos of results announcements and results forms, purporting to hide behind the principle of 'secret voting', which does not make sense at results declaration stage.

**Recommendation:** *The Commission should make a public declaration that once voting ends and counting starts, Observers, Agents and Media are free to record all the proceedings and take pictures of the process as they deem fit. Allow Election Observers and Party Agents to take snap shots of Election Declaration Forms once filled and signed using their smart phones or cameras, video-record the ballot counting officers as they make the final count of ballots, and video-record the Presiding and Returning Officers as they announce final results both at the Polling Station and at the Tallying Center.*

- ❖ **Issue No. 6.** Our monitors at Imara Daima Polling Station (Embakasi South) and NSSF Polling Station (Starehe) in Nairobi came across some IEBC stamping clerks, who were stamping "IEBC REJECTED" at the back of a ballot issued to specific voters identified by their second names and therefore being perceived to be of a certain political leaning.

**Recommendation:** *We would like the Commission to clarify to all stakeholders about how many officers at the Polling Station are issued with official IEBC stamps, how many stamps are issued per Polling Station, what type of stamps and for what purpose.*

- ❖ **Issue No.7.** In the Langata High School Polling Center, Langata Constituency, one Presiding Officer, a Mr. Rotich requested all the IEBC staff and independent observers to take a break after voting was completed, go for lunch and leave him to take charge of the ballot boxes. It resulted into heated exchanges with our Observers whom we advised not to leave the station.

**Recommendation:** *The Commission should give direct lines of senior managers and Commissioners who can be called to immediately establish the lawfulness of certain electoral staff and take immediate action to avert rampant malpractices.*



- ❖ **Issue No. 8.** In many national exercises such as Census by the Kenya National Bureau of Statistics or examinations by the Kenya National Examinations Council, top managers, directors and even Cabinet Secretaries and their Principal Secretaries are seen scattered in the field moving from station to station, responding to emergencies, being on top of the game – to avert possible sabotage or mischievous acts by staff or other criminals.

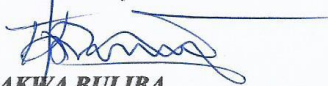
***Recommendation:*** *IEBC Commissioners should move away from the comfort zone of the National Tallying Center, together with their directors and managers and even engage the services of other election chiefs from other countries to be in every county, responding to issues, with powers to stop polling where the process is so much compromised and order a repeat in subsequent days.*

- ❖ **Issue No. 9.** Our Observers fear that Commissioners have abandoned their oath of office and taken sides with various political formations, thereby taking decisions that serve the selfish interests of various politicians at the detriment of our democratic culture and posterity.

***Recommendation:*** *Could Commissioners take time and do soul-searching to examine if they are serving the public interest and following the dictates of the law or subverting the common good to please their political masters. If you find yourself unable to serve the public good impartially, objectively and selflessly, we kindly request that you resign instead of exposing the whole country to a political implosion. There will be no IEBC and no Commissioners if Kenya collapses. The country is more important than individual of their short term pursuits.*

It is our hope and belief that you will consider our report and act upon our humble requests in compliance with the Constitution and other applicable electoral laws and effect the necessary changes for the betterment of our nascent democracy and prosperity of the people of Kenya.

Most Sincerely,



**SAKWA BULIBA**  
**SECRETARY, International Governance Institute**

CC. ALL COMMISSIONERS